

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL : MDL No. 2804
PRESCRIPTION OPIATE :
LITIGATION : Case No. 17-md-2804
:
APPLIES TO ALL CASES : Hon. Dan A. Polster
:
:

HIGHLY CONFIDENTIAL

SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

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JANUARY 25, 2019

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VIDEOTAPED DEPOSITION OF ROBERT A. MCCLUNE,
taken pursuant to notice, was held at Marcus &
Shapira, One Oxford Center, 35th Floor, Pittsburgh,
Pennsylvania 15219, by and before Ann Medis,
Registered Professional Reporter and Notary Public in
and for the Commonwealth of Pennsylvania, on Friday,
January 25, 2019, commencing at 9:11 a.m.

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P R O C E E D I N G S

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THE VIDEOGRAPHER: We are now on the record. Today's date is January 25, 2019, and the time is approximately 9:11 a.m.

This is the videotaped deposition of Robert McClune in the National Prescription Opiate Litigation.

All counsel and parties present will be noted on the stenographic record.

Will the court reporter please swear in the witness.

ROBERT A. MCCLUNE,

having been first duly sworn, was examined

and testified as follows:

EXAMINATION

BY MR. BARTON:

Q. Mr. McClune, my name is Eric Barton. I'm here from Wagstaff & Cartmell in Kansas City. We met just before the deposition; correct?

A. Correct.

Q. Would you go ahead and -- just a formality -- but state your full name for the record again, please.

A. Sure. It's Robert Anthony McClune.

1 Q. Thank you. I'm going to have a number
2 of questions for you today.

3 You understand you're here to have your
4 deposition taken in a case that is pending in the
5 Northern District of Ohio by plaintiffs, cities,
6 and counties, against a number of companies,
7 including HBC, arising out of the opioid epidemic?

8 A. Yes.

9 Q. You understand that's why you're here
10 today?

11 A. Yes.

12 Q. Have you ever had your deposition taken
13 before?

14 A. I've had a deposition before, yes.

15 Q. And when was -- when was that?

16 A. Last deposition, two years ago, roughly.

17 Q. Okay.

18 A. Not for this case.

19 Q. So you've been deposed more than one
20 time?

21 A. I had one formal. The other one, I
22 don't think it would count as a deposition. So
23 just one; just one.

24 Q. And how about testifying in trials?
25 Have you ever actually testified in a courtroom,

1 in a trial, for any reason?

2 A. No.

3 Q. The deposition, if you don't mind me
4 asking, I don't need you to get into real details
5 of it, but what was the nature of the case in
6 which you have previously given a deposition?

7 A. It was an antitrust case.

8 Q. And you say that was about two years
9 ago?

10 A. Yes.

11 Q. Do you know what court that case was
12 pending in?

13 A. I do not.

14 Q. Were you deposed as an employee or
15 representative of Giant Eagle?

16 A. Yes.

17 Q. Were you represented at that deposition
18 by this same law firm, Marcus & Shapira?

19 A. Yes.

20 Q. Do you remember any of the parties
21 involved in that case other than Giant Eagle?

22 Do you remember the names of anyone else
23 involved? The defendants?

24 A. By "defendants," you mean the
25 manufacturers that would be associated in the

1 case?

2 Q. I guess, yes, if there were
3 manufacturers involved, yes.

4 A. AbbVie and Teva Pharmaceuticals.

5 Q. So it was an antitrust case involving
6 pharmaceuticals?

7 A. Yes.

8 Q. So you've been through this process
9 before, so we don't have to belabor too much of
10 the rules of the road. But let me just ask you a
11 few, again, just to make sure we have the same
12 understanding.

13 You do understand you are under oath today,
14 just as if you were testifying in a courtroom at
15 trial; correct?

16 A. Yes.

17 Q. And you understand that this deposition
18 is being videotaped in the event that there may be
19 a trial, and you may not be required to appear
20 personally at that trial, but your testimony today
21 could be used as some of the testimony to be
22 played at that trial?

23 A. Yes.

24 Q. If today I ask you a question that you
25 don't understand, would you please feel free to

1 tell me so and I will phrase it?

2 A. Yes. No problem.

3 Q. And as we get going, if you fail to give
4 like an audible answer, a "yes" or a "no," and
5 instead just nod your head or say "uh-huh," I
6 might ask for a clarification for the sake of our
7 written record.

8 Is that okay?

9 A. Yes. I'll do my best.

10 Q. Generally, and I'm not asking you to
11 reveal any, you know, actual communications,
12 conversations that you've had with your lawyers
13 here today, but what did you do generally to
14 prepare for this deposition today?

15 A. I've worked for Giant Eagle for ten
16 years and in preparation for this case reviewed
17 relevant case materials that would possibly come
18 up as part of this deposition.

19 Q. And case materials, for example -- I'll
20 just ask you a few specifics just to see.

21 Did you review any of the actual what we call
22 pleadings, the complaint, what the case alleges,
23 or any of those types of documents that have been
24 filed in court?

25 MR. KOBRIN: I'm going to object. I

1 mean, I'm okay with you asking him -- objection.

2 I'm okay with you asking him about whether he
3 looked at documents, but I don't want you doing a
4 line of inquiry that's going to essentially reveal
5 whatever we showed him, because I think that's
6 work product.

7 MR. BARTON: That's fine. I think we
8 can just take that as it goes, but I'm only asking
9 just a general sense of what he looked at.

10 I'm not going to try to have him tell me
11 every single document --

12 MR. KOBRIN: Yeah. If you're trying to
13 narrow it down by asking the areas of documents
14 and the types of documents, I think that would be
15 inappropriate.

16 MR. BARTON: I think I'm keeping it to
17 categories is my goal.

18 BY MR. BARTON:

19 Q. But just categorically, did you review
20 any of the pleadings in the case?

21 A. Early on, yes.

22 Q. And I assume you might have gone back
23 and looked at emails that you were involved in,
24 you know, that may have pertained to the time
25 period relevant to the case?

1 MR. KOBRIN: Object to form.

2 THE WITNESS: Yes.

3 BY MR. BARTON:

4 Q. Have you, other than -- well, I assume
5 you met with your attorneys to prepare for the
6 deposition before today?

7 A. Yes.

8 Q. About how long did you spend preparing
9 with them?

10 A. Since HBC was added to the case.

11 MR. KOBRIN: Do you mean in general or
12 yesterday?

13 MR. BARTON: I guess all total.

14 BY MR. BARTON:

15 Q. You met maybe perhaps more than one time
16 with counsel to prepare for the deposition?

17 MR. KOBRIN: To prepare for the
18 deposition.

19 THE WITNESS: I met yesterday to prepare
20 for the deposition eight to ten hours.

21 BY MR. BARTON:

22 Q. Other than meeting with counsel, have
23 you spoken with others to help you prepare for the
24 deposition? "Others" meaning other employees of
25 Giant Eagle first.

1 A. Yes. We've spoken about the case.

2 Q. Other people have been deposed. And so
3 maybe you've spoken with others who had their
4 depositions taken.

5 MR. KOBRIN: You're talking about just
6 in preparation for the deposition?

7 MR. BARTON: Correct.

8 THE WITNESS: Yes.

9 BY MR. BARTON:

10 Q. Who have you spoken to just in
11 preparation for this deposition in terms of other
12 employees at Giant Eagle?

13 A. Can you restate that question.

14 Q. Yeah. What other employees of Giant
15 Eagle have you spoken to in preparation for your
16 deposition today?

17 A. George Chunderlik, Jim Tsipakis, Mike
18 Bianco, Fred Bencivengo. Just others that would
19 be involved with this case.

20 Q. In terms of any of those conversations
21 you've had with them that have not been in the
22 presence of counsel, that have not been during a,
23 you know, prep session at which counsel was
24 present, have you had those conversations just in
25 the hallway?

1 MR. KOBRIN: I object to that. I don't
2 want him to get the impression that just because
3 counsel was not present in person during
4 conversations where he's preparing for his
5 deposition that it's not privileged.

6 If it was at the direction of counsel or we
7 were involved in any way, I think that's still
8 privileged. So I still don't want him getting
9 into the nature of those preparatory
10 conversations.

11 MR. BARTON: Okay.

12 BY MR. BARTON:

13 Q. I don't want you to reveal anything that
14 you may have talked about with George Chunderlik
15 or Mike Bianco that is advice or communications
16 you've had with counsel, relaying to each other
17 things that you've spoken about with counsel. I'm
18 putting that aside.

19 I'm just getting a sense for what subjects
20 have you talked with them about in preparation for
21 your deposition.

22 A. Most of our conversations were with
23 counsel present, not to say there haven't been
24 cases where there haven't been. Most of it was
25 just rehashing --

1 MR. KOBRIN: Don't get into the content
2 of the conversation. Just the fact that we were
3 present means it's privileged.

4 MR. BARTON: Well, I think the subjects
5 are okay, just subject matter.

6 MR. KOBRIN: No. I'd rather he not talk
7 about subject matter. I think that's work product
8 and confidential privileged communications.

9 MR. BARTON: Well, we'll move on. I
10 disagree, but we'll move on from that right now.

11 BY MR. BARTON:

12 Q. So other than other employees of Giant
13 Eagle, is there anyone else who you may have
14 spoken with in preparation for the deposition?

15 A. No.

16 (HBC-McClune Exhibit 1 was marked.)

17 BY MR. BARTON:

18 Q. I'm going to hand you what we've marked
19 as Exhibit 1. It's P-GEN 128.

20 I'll represent to you that we have, I
21 believe, printed this from LinkedIn. And it
22 appears to be a profile that you can download in
23 PDF from LinkedIn that summarizes your work and
24 educational background.

25 Is that true?

1 A. Yes. Based on my review, it does look
2 like it came from LinkedIn.

3 Q. And what is LinkedIn?

4 MR. KOBRIN: Object to form.

5 THE WITNESS: An online social media
6 site more for business networking.

7 BY MR. BARTON:

8 Q. You're familiar with LinkedIn as a
9 social media platform, whatever it is?

10 A. Yes.

11 Q. Is this Exhibit 1 content that you
12 provided to LinkedIn to create or maintain your
13 profile on LinkedIn?

14 A. I've not read this document verbatim,
15 but it does appear to be information that I
16 updated online and posted.

17 Q. And that's my question. At some point
18 in time, this is content that you likely provided
19 as opposed to somebody -- some other third party
20 providing content?

21 A. Yes. That's correct.

22 Q. Well, I just want to walk through some
23 of the history here, your employment background,
24 educational background, starting with -- I noted
25 that you graduated from Beaver Area Senior High

1 School in 1997; correct?

2 A. That is correct.

3 Q. Beaver, Pennsylvania, kind of between
4 here and Youngstown?

5 A. That's correct.

6 Q. And those are the Beaver Bobcats?

7 A. That's also correct.

8 Q. And I wonder why they weren't called the
9 Beaver Beavers.

10 A. Yeah. It's a good question. I think
11 there are other neighboring schools that use that
12 as a mascot.

13 Q. At Penn State, you list a bachelor of
14 science, but what did you get your degree in?

15 A. My undergrad is in advertising.

16 Q. Did you have any computer or information
17 systems kind of coursework or studies in college?

18 A. Yes. A lot of my coursework was built
19 around analytics, advertising analytics.

20 Q. So that was part of your advertising
21 degree, I guess?

22 A. Yes.

23 Q. Have you taken any graduate school of
24 any kind?

25 A. I took one postgrad programming class at

1 Penn State. I don't have it listed on there.

2 Q. And was that programming in any, you
3 know, kind of particular language or --

4 A. SQL.

5 Q. And SQL, is that -- I won't be very
6 precise in some of the technical questions. But
7 is that kind of a database language --

8 A. Yes.

9 Q. -- for lack of a better word?

10 A. Standard query language, yes.

11 Q. Standard query language. That's what
12 SQL stands for?

13 A. Yes.

14 Q. Do people sometimes say SQL instead of
15 SQL?

16 A. Yes.

17 Q. So that is -- well, describe for me,
18 since you know more about it than I do, what is
19 the function of SQL?

20 A. It's a language that allows you to merge
21 together and run reports, analytics, calculations
22 against standard structure database, so a
23 relational database.

24 Q. Relational database is a good way to put
25 it perhaps as just a broad category?

1 A. Yeah.

2 Q. So other than that, that postgraduate
3 class in the SQL language, have you had any other
4 formal technical training past your undergraduate
5 degree?

6 A. No.

7 Q. I want to flip to what's on page 4.
8 Just noting that you went to work in August 2004
9 for AstraZeneca; correct?

10 A. Yes.

11 Q. And worked for, it looks like, about a
12 year and a half as a marketing representative;
13 correct?

14 A. Yes.

15 Q. Was this job your first experience
16 working in the pharmaceutical industry?

17 A. Yes.

18 Q. And as part -- I know the first bullet
19 point that you list there describing some of your
20 job responsibilities says, "Conducted and designed
21 marketing programs targeting physicians for
22 products including Nexium and Crestor."

23 Do you see that?

24 A. Yes.

25 Q. That's one thing you did for

1 AstraZeneca?

2 A. Yes.

3 Q. Did you learn through the experience of
4 working for AstraZeneca that the prescribing
5 habits and choices of individual physicians have a
6 significant impact on how much of any one drug or
7 class of drug is sold?

8 MR. KOBRIN: Object to form.

9 THE WITNESS: Can you repeat that
10 question.

11 BY MR. BARTON:

12 Q. Yeah. It probably wasn't very well
13 said.

14 Did you learn through your experience with
15 AstraZeneca, your first job in the pharmaceutical
16 industry, that the individual prescribing habits
17 or practices of physicians can have a significant
18 impact on the quantity of any given drug being
19 sold?

20 MR. KOBRIN: Object to form.

21 THE WITNESS: Being that I wasn't
22 directly involved with the sales team, I'm not
23 sure of the influence. But our programs were
24 designed to provide information to doctors so they
25 can make a more educated decision.

1 BY MR. BARTON:

2 Q. With the end goal of the company being
3 to sell the drugs that the company makes to sell;
4 correct?

5 MR. KOBRIN: Object to form.

6 THE WITNESS: I suppose that's correct.

7 BY MR. BARTON:

8 Q. Nexium and Crestor, those are -- are
9 those controlled substances? Like, are they
10 Schedule anything controlled substances?

11 A. From a DEA perspective non-schedule, but
12 Schedule VI technically.

13 Q. Right. Nexium, is that -- that's like a
14 reflux medication?

15 A. Yes.

16 Q. And Crestor, is that a cholesterol
17 medication, lowering your cholesterol?

18 A. Yes.

19 Q. At any time, when working for
20 AstraZeneca, were you involved in marketing any
21 Schedule II or III controlled substances?

22 MR. KOBRIN: I just want to object to
23 form.

24 How far do you think you're going to go down
25 the path on AstraZeneca? Because I may want to

1 talk to the client at some point just to make sure
2 that we're not breaching any kind of
3 confidentiality here.

4 MR. BARTON: Not very far. I'm asking
5 basically the question I just asked, and that's
6 probably about it.

7 MR. KOBRIN: Okay.

8 BY MR. BARTON:

9 Q. Did you ever sell -- did you ever help
10 market any opioid pain medications for
11 AstraZeneca?

12 A. No.

13 Q. Or any other controlled substances that
14 you recall?

15 A. No.

16 Q. All right. Your next position it
17 appears was with an entity called IMS Health;
18 correct?

19 A. Yes.

20 Q. How would you describe the business of
21 IMS Health at the time that you worked for them?

22 A. IMS Health is a major data provider for
23 the pharmaceutical industry. There were many
24 aspects of the business that I was not intimately
25 involved with.

1 My group worked on Rx database management,
2 working with retailers, bringing that information
3 into a database, and then selling that information
4 back out to manufacturers.

5 Q. Is IMS Health based in Pittsburgh?

6 A. No.

7 Q. Where are they headquartered?

8 A. I'm not a hundred percent -- I think
9 they're using Stamford, Connecticut as their
10 headquarters right now. I was based out of
11 Plymouth Meeting, Pennsylvania, just outside of
12 Philadelphia.

13 Q. And your position you described as
14 business analyst. And you just described a little
15 bit about what the company did; correct?

16 A. Yes.

17 Q. Can you tell me just what your -- in
18 general, describe what you did for IMS Health at
19 that time.

20 A. Yes. I worked with the retailers to
21 make sure their data came into our repository, the
22 data was in line with our projected or imputed
23 expectations.

24 Once we qualified that data, we married it
25 into our larger database that drove deliverables

1 out to the manufacturing community.

2 Q. So if I understand what you're saying,
3 one of the things that IMS Health did, and maybe
4 still does, is to collect sales transactional data
5 from retailers about their sales of prescription
6 drugs; correct?

7 A. Yes.

8 Q. And then it collects that information
9 from a number of different retailers; right?

10 A. Yes.

11 Q. And then it will combine all that data
12 into a larger database so that it can evaluate
13 larger trends and get a bigger picture of what's
14 going on than just any one retailer might see from
15 their own data?

16 MR. KOBRIN: Object to form.

17 BY MR. BARTON:

18 Q. Is that one of the purposes of doing
19 that?

20 A. Yes.

21 Q. And so the retailers can, I assume,
22 subscribe or enter into a relationship of some
23 kind with IMS Health to be able to provide their
24 data and, in return, get access to the analytics
25 and the analysis of the larger data that IMS

1 Health may use; correct?

2 A. At this point in time when I was with
3 IMS, the deliverables were mainly manufacturer
4 focused.

5 Q. And so the deliverables, meaning the
6 output of IMS from the analysis that it did of
7 whatever data they got.

8 A. Yes.

9 Q. That's what you mean by "deliverables"?

10 A. Correct.

11 Q. And so they were -- their customers were
12 manufacturers who were interested in knowing what
13 all of the retailer data looked like?

14 A. Yes.

15 Q. One of the bullet points on the IMS
16 Health position I just wanted to ask you about, it
17 looks like it's five bullet points down, but you
18 say -- one of the things that you've listed there
19 was to build an Excel-based analytical tool used
20 by the entire department for processing and
21 comparing data in parallelling systems during the
22 migration from a mainframe system to an Oracle
23 database system.

24 Did I read that correctly?

25 A. Yes.

1 Q. The Excel-based analytical tool, I just
2 want to ask, is that a reference -- you're using a
3 lower case E there, but is that a reference to
4 Microsoft Excel?

5 A. Yes.

6 Q. And Microsoft Excel is a program that is
7 part of the Microsoft Office suite that a lot of
8 people have on their computers?

9 A. Yes.

10 Q. And that was true -- "that" being that
11 Microsoft Excel was part of the Microsoft Office
12 package, that was true back in 2006, 2007;
13 correct?

14 A. Yes.

15 Q. I remember it. I even remember way back
16 then.

17 Was this job at IMS Health your first
18 full-time job that focused on data analytics
19 specifically in the pharmaceutical industry?

20 A. Yes.

21 Q. And that was maybe the change from
22 AstraZeneca to IMS Health, is you really started
23 to get into data analytics with IMS Health?

24 MR. KOBRIN: Object to form.

25 THE WITNESS: Yes. I did less analytics

1 at AstraZeneca than I did at IMS.

2 BY MR. BARTON:

3 Q. While you were at IMS Health, did you
4 meet or come into contact with people from Giant
5 Eagle?

6 A. No. Giant Eagle was not a data provider
7 to IMS at that point in time.

8 Q. That's why I asked. Because we actually
9 have some emails where we see that Giant Eagle did
10 provide data to IMS later in time.

11 And that's why I just wondered if that was a
12 connection of how you got to Giant Eagle, but --

13 A. No, it's not.

14 Q. -- we'll get there. We'll get there.
15 Okay. I just wondered.

16 A. I'm from here. That's how.

17 Q. Okay. Very good.

18 A. Just fast-forward.

19 Q. You're from Beaver.

20 A. Close enough.

21 Q. Before I leave it, I realize this is
22 kind of elementary to you. But a lot of people
23 are, at least in my world, pretty familiar with
24 Microsoft Word, word processing program, and maybe
25 fewer people in my world are as familiar with

1 Microsoft Excel and what it does and what it can
2 do.

3 Can you just describe generally for us what
4 Microsoft Excel is to you?

5 MR. KOBRIN: Object to form.

6 To the extent that you know.

7 BY MR. BARTON:

8 Q. Just describe what -- what does it do?

9 A. It's a spreadsheet application that is
10 used to organize data and information for business
11 or personal or whatever use.

12 Q. So within Microsoft Excel you can enter
13 a lot of data and organize it, as you said;
14 correct?

15 A. Yes.

16 Q. And is it also possible within Microsoft
17 Excel to create formulas or sort data in ways that
18 you can, you know, compare one dataset to another
19 dataset, for example?

20 A. Yes.

21 Q. So if you know how to manipulate
22 Microsoft Excel, it is a software program that
23 allows you to create and do certain things with
24 data in a database; true?

25 MR. KOBRIN: Object to form.

1 THE WITNESS: Yes.

2 BY MR. BARTON:

3 Q. Would you agree, I guess, that Microsoft
4 Excel is one kind of tool for data analytics?

5 A. Yes.

6 Q. Just moving up your job history here, it
7 appears you then moved from IMS Health initially
8 to the Nielsen Company; correct?

9 A. Yes.

10 Q. And that job looks like it wasn't really
11 focused in the pharmaceutical industry. Is that
12 true?

13 A. That is true.

14 Q. And then the next position -- you were
15 there until July 2008 at the Nielsen Company. And
16 then in July 2008, it appears that you became a
17 business analyst and a senior pharmacy business
18 analyst. And that was for Giant Eagle; correct?

19 A. Yes.

20 Q. So you started employment with Giant
21 Eagle in approximately July 2008?

22 A. Yes.

23 Q. How did you come to be hired by Giant
24 Eagle?

25 A. How much history do you want?

1 Q. Well, I know you lived in Beaver, and I
2 know you're from here.

3 But I guess I was just curious if you had a
4 specific connection to a person here or just what
5 happened.

6 A. No. The Nielsen Company, the position
7 was here in Pittsburgh. My job was transferred to
8 San Francisco, and I did not want to move. So I
9 put my r sum out there, applied for positions at
10 Giant Eagle, and was contacted by HR for an
11 interview.

12 Q. Well, it would appear that the job
13 description, as you provided it here on your
14 profile, the kinds of things you did, it appears
15 like it was a pretty good fit for some of the
16 experience you already developed with IMS Health
17 and before; correct?

18 A. I would agree with your opinion.

19 Q. So in your position as a business
20 analyst and senior pharmacy business analyst --
21 well, first of all, are those two different titles
22 that you held during that two-year form of
23 timeframe?

24 A. Yes. And just to help, as you progress
25 through this, I've lumped -- sometimes I'm in the

1 role and promoted pretty much doing the same
2 function.

3 I've, in this breakdown, lumped those
4 together. So you'll see that maybe more than once
5 as we continue through. I haven't fully reviewed
6 what I have on here because I don't update it that
7 often.

8 Q. So that's how I read it and assumed that
9 was true, that those were two different titles,
10 but the kind of description of what you did below
11 that is relatively applicable to that whole
12 timeframe when you held a couple of different
13 titles; correct?

14 A. Yes. That's correct.

15 Q. So can you tell me, if you remember,
16 where in the organizational chart for Giant Eagle,
17 where did the -- obviously, you were in the
18 pharmacy side of the business; correct?

19 MR. KOBRIN: Object to form.

20 BY MR. BARTON:

21 Q. Let me just try to narrow it down.

22 I'm just trying to figure out where this fell
23 organizationally, and let me just ask more
24 specific questions.

25 Did you have someone you reported to in that

1 position?

2 A. Yes.

3 Q. Who was that?

4 A. Sean Raynak.

5 Q. What was Sean Raynak's position?

6 A. He was -- I may not have the title
7 exactly right because it's been ten years now --
8 manager of pharmacy finance.

9 Q. Do you know who Sean Raynak reported to
10 at that time?

11 A. I believe he reported directly to Randy
12 Heiser.

13 Q. Who was?

14 A. The VP of pharmacy at that point in
15 time.

16 Q. Thanks. Did you, in turn, at this point
17 in time -- from July of 2008 to October of 2010,
18 do you recall, did you have people under you or
19 who worked for you and who reported to you?

20 A. No.

21 Q. Were you part of a team of business
22 analysts or senior pharmacy business analysts who
23 reported to --

24 A. Sean Raynak?

25 Q. Sean, yeah. I'm sorry.

1 A. It was a team of one.

2 Q. Do you recall, was that a newly created
3 position for you and for Giant Eagle, or were you
4 filling someone's shoes who had left?

5 A. I was filling someone's shoes that had
6 transferred to a different position internally.

7 Q. Who was that person, if you recall?

8 A. I believe it was Al Makita.

9 Q. This position, one of the things that
10 you describe as your responsibilities then was
11 that you were accountable for the design,
12 management and distribution of all pharmacy
13 advanced analytics; correct?

14 A. Yes. That's what I wrote on here.

15 Q. When you use design in that description,
16 what do you mean by design?

17 A. Work with the business lead to
18 understand what information they needed, harvested
19 that information from the database and provided it
20 in a report.

21 Q. Okay. So...

22 A. I guess to elaborate a little more, it
23 wasn't my responsibility. I was in support of the
24 business leads. So they technically maybe would
25 have been the designers. I was just supporting

1 their design.

2 Q. And I'm trying to think of a way to
3 describe it.

4 But you had some technical skills with
5 respect to the analytical tools, the database
6 tools. You had the ability to extract or find
7 data and have it analyzed in certain ways.

8 And so if somebody asked you to try to come
9 up with a way to analyze data, you could use the
10 tool to try to figure out how to do that. That's
11 a poor description, but is that somewhat accurate?

12 A. Yes.

13 MR. KOBRIN: Object to form.

14 MR. BARTON: Yeah. I'd object to the
15 form of that, too. That was bad.

16 BY MR. BARTON:

17 Q. Let me try it a little better, just
18 because I -- when we get into the areas of
19 technical computer skill and that, those of us who
20 don't have that lose some of the facility of the
21 language.

22 So with your various software tools,
23 including Microsoft Excel and others that were
24 available to you for analytics, you had the
25 ability and the knowledge to customize those and

1 use those tools to design or create the kind of
2 reports that might be requested of you from the
3 businesspeople for whatever objectives they had.

4 MR. KOBRIN: Object to form.

5 THE WITNESS: Yes.

6 BY MR. BARTON:

7 Q. And so that was your job -- part of your
8 job from 2008 to October 2010, July 2008 to
9 October 2010; correct?

10 A. Yes.

11 Q. And the next bullet point again says you
12 created an automated Excel-based reporting system;
13 right?

14 A. Yes.

15 Q. And that again -- you use lower case E,
16 but you're, again, referring there to Microsoft
17 Excel; correct?

18 A. Yes. Maybe I should capitalize those.

19 Q. No, I'm not being critical. You know,
20 excel, lower case E, could mean something else,
21 you know.

22 A. No. No.

23 Q. You could excel at something.

24 A. I appreciate the clarity and the
25 feedback. I'll make sure I update that right

1 after this.

2 Q. Well, it's fine. It's kind of a
3 millennial thing to use lower case.

4 A. I don't categorize the millennials.

5 Q. No, neither do I. That's why I don't
6 know what I'm talking about.

7 So in the next bullet point you say,
8 "Responsible for all technical Giant Eagle
9 pharmacy strategic analysis."

10 That sounds like a lot. Can you kind of
11 describe for me what you mean by that? What
12 technical Giant Eagle pharmacy strategic analysis
13 are you referring to in general there?

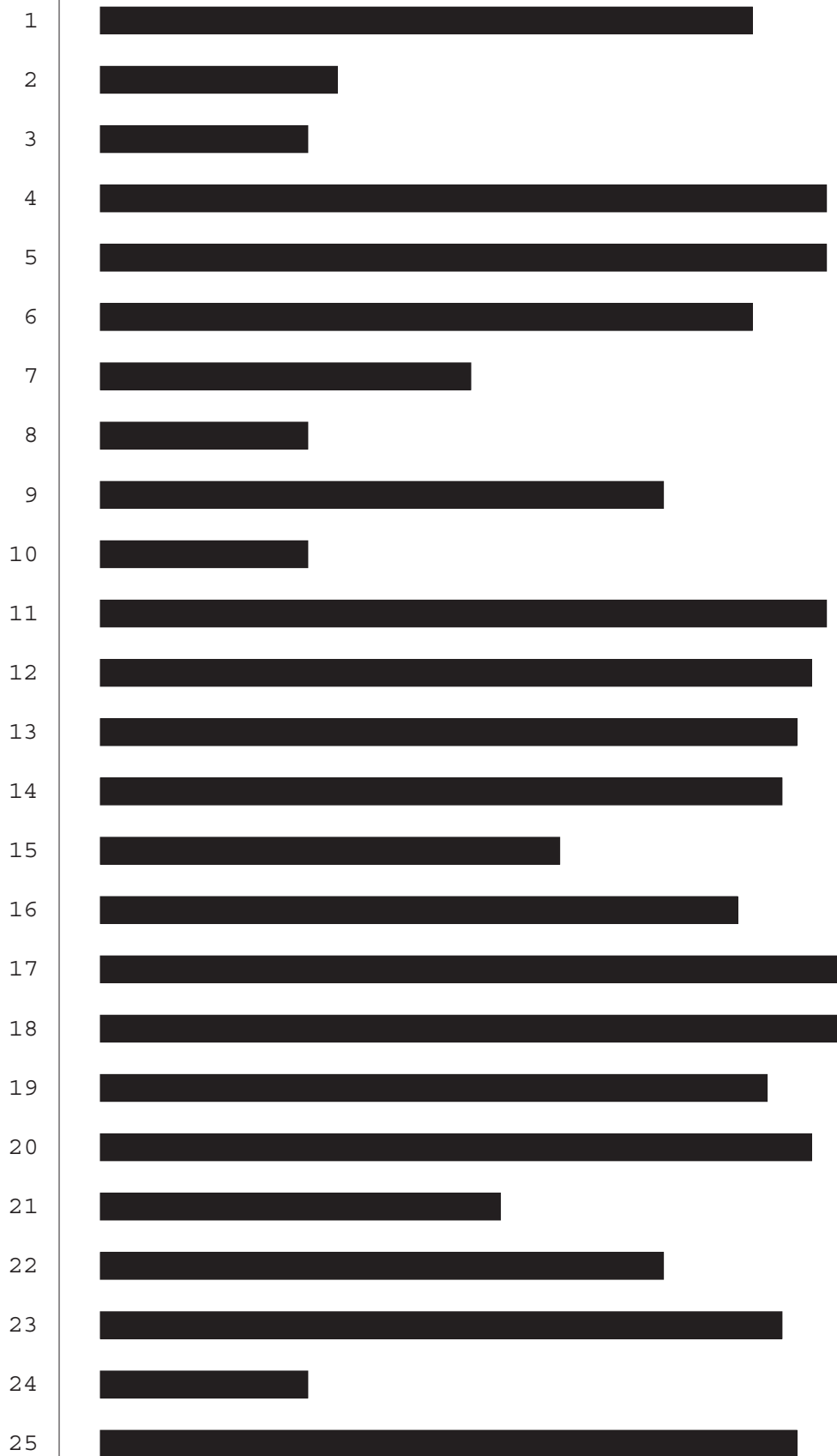
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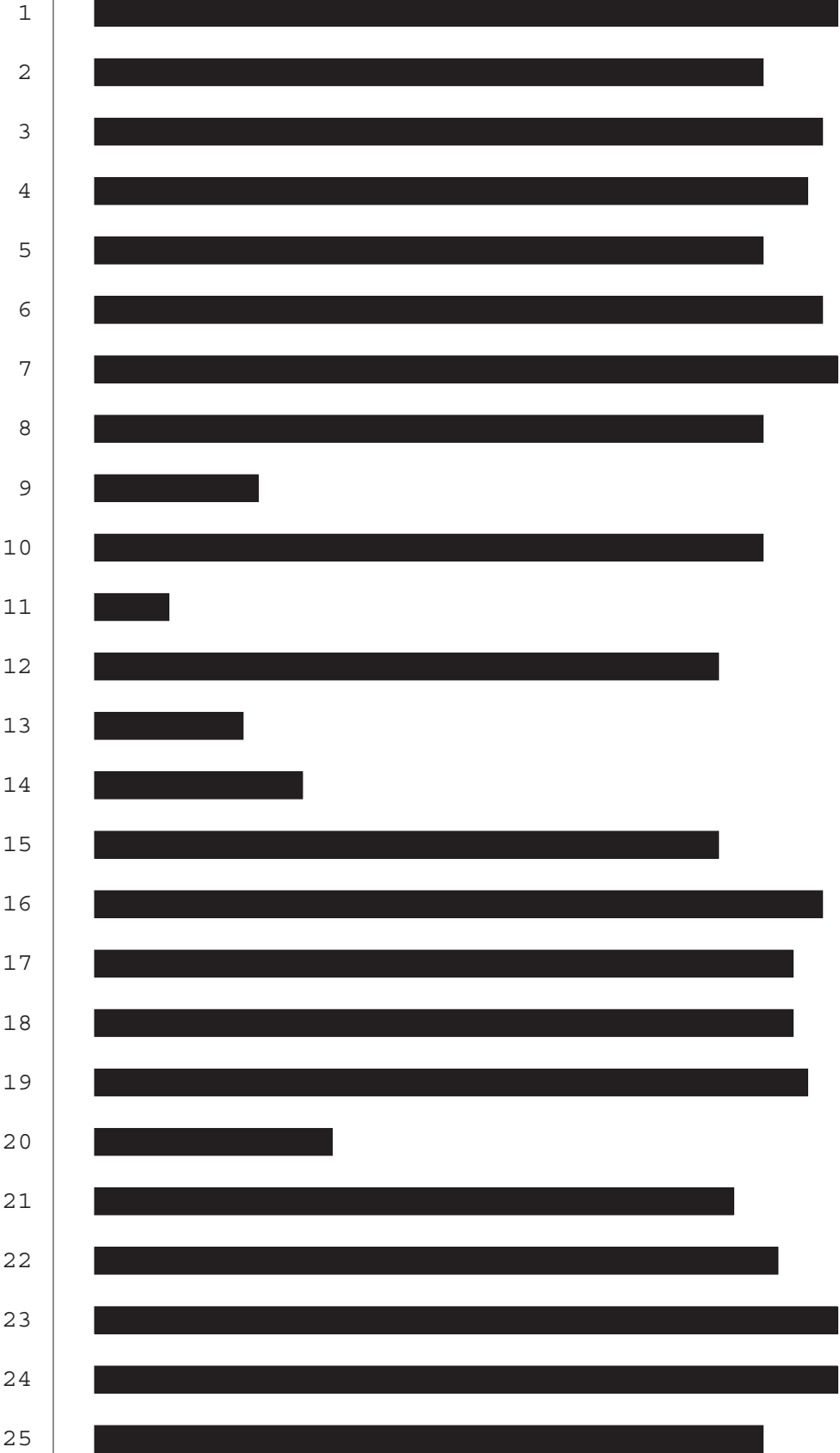
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Q. The next job on your r sum is also with Giant Eagle, correct, the senior business analyst, strategic financial planning and analysis; right?

A. Yes.

Q. And that's from October 2010 to August of 2012, so almost a two-year period there; correct?

A. Yes.

Q. And that also appears to not be exclusive to the pharmacy side; true?

A. Yes. I would agree.

Q. So did you kind of move in the organizational chart out from under reporting to --

A. Sean Raynak.

Q. -- Sean Raynak -- sorry. That name is not sticking.

But did you move from reporting to him to reporting to somebody else during that period of time?

A. Yes.

1 Q. Who did you report to?

2 A. Valery Ciarimboli.

3 Q. And what was her position?

4 A. May not remember the exact title.

5 Manager of business planning and FP&A.

6 Q. That last thing you said, FP&A, what
7 does that stand for?

8 A. Financial planning and analysis.

9 Q. Got it. What was the reason for your
10 change of position then?

11 A. FP&A needed an SQL programmer and they
12 sought me out.

13 Q. How did that work differ from what you
14 had been doing before?

15 And I know it's obvious, if you were out of
16 pharmacy and you're now in sort of the bigger
17 Giant Eagle scope. But like how did it differ,
18 the work you were doing?

19 A. Dramatically. I worked with other lines
20 of businesses helping them build business plans.

21 Q. And in terms of helping the other lines
22 of business build business plans, what was your
23 role and contribution in helping them do that?

24 A. Many business leaders are not analytics
25 or financial experts. So you would work with them

1 on their business plan to understand what their
2 goals were and then construct either the budget or
3 the analytics needed in order for them to achieve
4 their goals.

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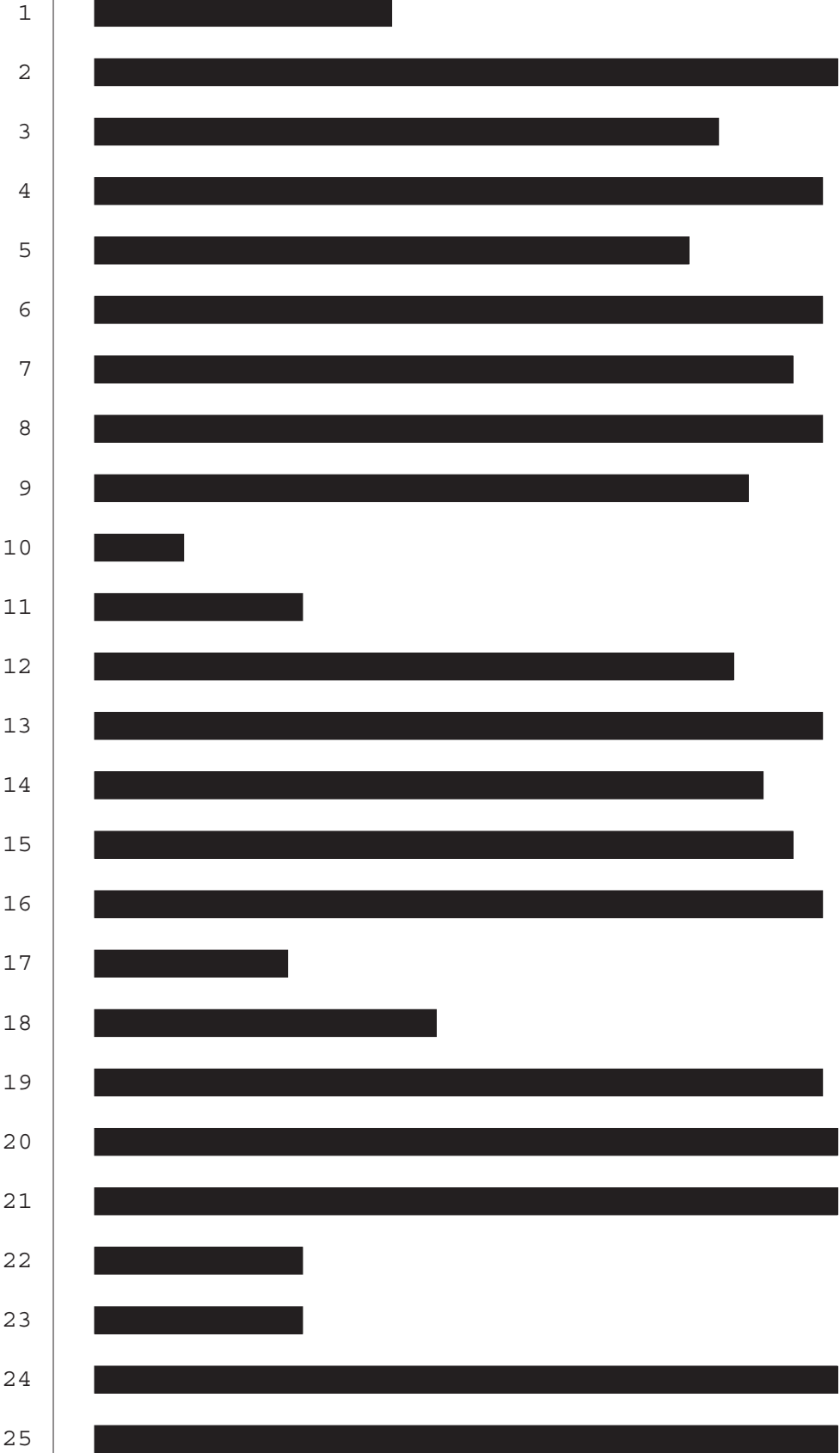
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Q. Then it appears in August 2012 you moved

20

back to the pharmacy side of the business;

21

correct?

22

A. Yes.

23

Q. And so from August 2012 to

24

December 2014, you had the positions of manager

25

and senior manager of financial planning for the

1 pharmacy side; right?

2 A. Yes.

3 Q. In that position, who did you report to
4 then?

5 A. Under the manager title, directly to
6 Greg Carlson. Under the senior manager title,
7 directly to Brett Merrell.

8 Q. So that was in a different place
9 organizationally in the company than you had been
10 back when you were a business analyst in July 2008
11 to October 2010; correct?

12 A. Yes.

13 Q. Some of the descriptions you provide of
14 the work that you were doing seem like there's
15 some overlap or they seem somewhat similar.

16 But why don't you tell me: How did this job
17 from August 2012 to December 2014 differ from what
18 you had been doing July 2008 to October 2010?

19 A. When I returned, I was in a more
20 elevated role. I was replacing Sean Raynak who
21 had left the organization, which is why you see a
22 lot of the same business functions.

23 Q. In the first bullet point you are just
24 describing analytics for the pharmacy department,
25 in general, and describe some types that you were

1 doing. You mention shrink.

2 What does shrink mean as you use it there?

3 A. Shrink is lost, expired product that we
4 have to return to the manufacturer for
5 instruction, or could be valuation changes on a
6 product.

7 Q. So shrink then would represent any
8 change in the value of the inventory of product on
9 hand due to expiration, loss or reduction of
10 value?

11 MR. KOBRIN: Object to form.

12 THE WITNESS: Yes.

13 BY MR. BARTON:

14 Q. You reference the acquisition of the
15 first closed-door specialty pharmacy in that third
16 bullet point.

17 What was the specialty pharmacy that was
18 acquired there? What did it do?

19 A. The specialty pharmacy was primarily
20 focused on hepatitis C patient management.

21 Q. Where was it located?

22 A. Rocky River, Ohio.

23 Q. As you recall, if you recall, was that
24 created because there was a particular hepatitis C
25 problem that that specialty pharmacy could serve

1 for that area?

2 A. I don't recall.

3 MR. KOBRIN: How are you doing
4 time-wise? Do you want to take a break? Is this
5 a good time for you to take a break?

6 MR. BARTON: That's fine.

7 THE WITNESS: Yeah. I wouldn't mind
8 using the restroom and getting another coffee.

9 THE VIDEOGRAPHER: Going off the record.
10 The time is 10:11 a.m.

11 (Recess from 10:11 a.m. to 10:33 a.m.)

12 THE VIDEOGRAPHER: Now going back on the
13 record 10:33 a.m.

14 BY MR. BARTON:

15 Q. We're back on the record. And I've been
16 asking you about your employment history at Giant
17 Eagle and just some of the positions you've had,
18 some of the responsibilities you've had, who you
19 worked for, those types of things.

20 I have a few more down that, and so we'll
21 stay with your LinkedIn profile here for a little
22 bit. But I wanted to go back just to clarify
23 something in my own mind that I don't think I
24 asked or didn't understand.

25 I'm trying to understand the relationship

1 similarities/differences between the job that you
2 had as the business analyst from July 2008 to
3 October 2010 and then the job that you had two
4 jobs later, from August 2012 to December 2014,
5 both in the pharmacy department, both involving
6 some data analytics components to it.

7 But as you have testified, you were really
8 reporting to different people at the time, and so
9 it wasn't the same job. It was a little bit of an
10 elevated job for you, the second one; right?

11 A. Just to clarify, you're contrasting
12 August 2012 to December 2014 with July 2008 to
13 October 2010?

14 Q. Yes. That's what I'm trying to do. I'm
15 trying to understand how those jobs were similar
16 or different and who else kind of had those
17 similar jobs. I'm just trying to figure out where
18 you were in the company each time.

19 And so what I understand you to have told me
20 is that when you were the business analyst from
21 July 2008 to October 2010, that at that point in
22 time, you were -- and now I can't even read my
23 notes -- but you were reporting to Sean Raynak?

24 A. Correct.

25 Q. And Sean Raynak at that time you

1 understood to be reporting to whom?

2 A. I believe it was Randy Heiser.

3 Q. Randy Heiser. Right. Okay. That's
4 what I thought. And so that's kind of what you
5 recall having been the case from July 2008 to
6 October 2010.

7 And then when you moved into the position of
8 the manager, senior manager of financial planning
9 in August 2012 -- so you had gone out of the
10 pharmacy side and then came back to the pharmacy
11 side -- at that time, what you've told me is you
12 kind of replaced Sean Raynak, but you were
13 reporting at that time initially, to Greg Carlson;
14 correct?

15 A. Yes.

16 Q. And had Greg Carlson at that point --
17 was Randy Heiser still with the company?

18 A. I can't recall.

19 Q. So at the time that you were reporting
20 to Sean Raynak in the business analyst position,
21 so back in 2008 to 2010 -- and I'm sorry I'm
22 jumping back and forth. I'm trying to understand
23 kind of just if there were changes
24 organizationally in the company that I'm just
25 trying to figure out. That's all.

1 At the time you reported to Sean Raynak, you
2 had told me you were -- you were kind of a team of
3 one in terms of this data analytics person with
4 the SQL and Visual Basic skills under him;
5 correct?

6 A. Yes. That's correct.

7 Q. At that time, do you know, was there any
8 data analytics person with programming skills
9 reporting to Greg Carlson -- or it may not have
10 been Greg Carlson, but reporting to that other
11 line of business that you moved into in 2012?

12 MR. KOBRIN: Object to form.

13 THE WITNESS: Can you restate that.

14 BY MR. BARTON:

15 Q. Yeah. I'm trying to decide -- I'm just
16 trying to understand -- I know we're talking about
17 two different time periods, but I'm just trying to
18 understand if you kind of -- let me ask it
19 differently.

20 If you know, during the time of July 2008 to
21 October 2010, during that time that you were in
22 business analytics, team of one, reporting to Sean
23 Raynak, do you know anyone else on the pharmacy
24 side who also was in data analytics for purposes
25 of the pharmacy, who had the SQL skills, those

1 types of things?

2 MR. KOBRIN: Did he know at that time --

3 MR. BARTON: Yes.

4 MR. KOBRIN: -- or does he know of now

5 whether there was somebody at that time?

6 MR. BARTON: I'm asking him.

7 BY MR. BARTON:

8 Q. Do you know now whether there was

9 somebody at that time?

10 A. There were IT people with varying skill

11 sets, but I can't recall specifics.

12 Q. Do you recall working with anyone else

13 during that period of time who also kind of had

14 programming skills and used them for data

15 analytics purposes for the pharmacy?

16 A. No.

17 Q. Did Sean Raynak have those kinds of

18 programming or data analytics skills?

19 A. No.

20 Q. And did Greg Carlson?

21 A. No.

22 Q. Now moving forward to the August 2012 to

23 December 2014 period again, so I'll leave 2008 to

24 2010 alone now, in this time period of August 2012

25 to December 2014, did you, by then, have people

1 under you who reported to you?

2 A. Between August 2012 and December 2014 in
3 the manager and senior manager roles, I had
4 several direct reports during that time.

5 Q. Who were they?

6 A. Kayla Voelker, Brad Devine, Sheila
7 Yates, Jennifer Horin. I think that's it.

8 Q. Did they have similar job
9 responsibilities or did they all differ, the four
10 of them?

11 A. They all had different job
12 responsibilities.

13 Q. Did any of them have programming skills
14 or background?

15 MR. KOBRIN: Object to form.

16 THE WITNESS: Can you rephrase that or
17 restate that.

18 BY MR. BARTON:

19 Q. Those four you just mentioned, did any
20 of those four who were your direct reports, did
21 any of them have skills in programming, either in
22 Visual Basic or in SQL development skills?

23 A. Yes, but very light.

24 Q. Which of them had those skills? Did
25 they all have those skills or did just some of

1 them?

2 A. Kayla Voelker had skills. The other
3 three obtained skills during their tenure, but did
4 not enter the organization with those skills.

5 Q. And tell me a little more about Kayla
6 Voelker. Do you know when she entered the
7 organization?

8 A. I don't recall specifically.

9 Q. Do you know if she was in the
10 organization as far back as the 2008 to 2010 time
11 period?

12 A. She started with the organization after
13 I started.

14 Q. Which was July 2008. But do you recall?
15 Can you even ballpark it? Do you know how long
16 after you started that she did?

17 MR. KOBRIN: Object to form.

18 THE WITNESS: I can't -- I can't
19 speculate.

20 BY MR. BARTON:

21 Q. What's her background with programming
22 or analytics as you would describe it?

23 A. When she entered the organization, very
24 light. During her tenure with the organization,
25 she obtained a bachelor's degree in a similar

1 skill area. I don't recall the specific degree.

2 Q. And as you sit here, do you know when
3 she acquired that bachelor's degree?

4 A. I don't.

5 Q. You think it was in some kind of
6 technical computer-related field of study?

7 A. I believe that to be true.

8 Q. And you characterize her skills at the
9 time she entered the company as very light;
10 correct?

11 A. Yes.

12 Q. That does distinguish her from the other
13 three I think you listed who were also your direct
14 reports during that 2012 to 2014 time.

15 Am I correct in understanding they -- as
16 understand it, they may have entered the company
17 with no such skills, but then whatever they
18 learned, they learned on the job?

19 MR. RYAN: Object to form.

20 THE WITNESS: Can you restate which
21 specific skills you're referring to?

22 BY MR. BARTON:

23 Q. Yeah. Good question. The skills I'm
24 referring to right now are skills that involve
25 using effectively the tools of data analytics,

1 including Excel and any of the other tools that
2 we've talked about so far that you've used for
3 data analytics.

4 A. So to retract my earlier comment, they
5 all had some level of Excel skill prior to
6 reporting directly to me.

7 Q. Okay.

8 A. Kayla had some programming language
9 experience. The other three did not.

10 Q. Thank you for that clarification. And I
11 think that's kind of what I understood from what
12 you said before anyway, but I didn't probably
13 phrase the -- I wanted to phrase the basic
14 question broadly to see what the baseline was
15 there.

16 In the last bullet point of your summary of
17 your experience for the August 2012 to December
18 2014 job -- so I'm looking at the top of page 3,
19 Exhibit 1 -- that bullet point references the
20 development of the pharmacy enterprise reporting
21 system. Do you see that?

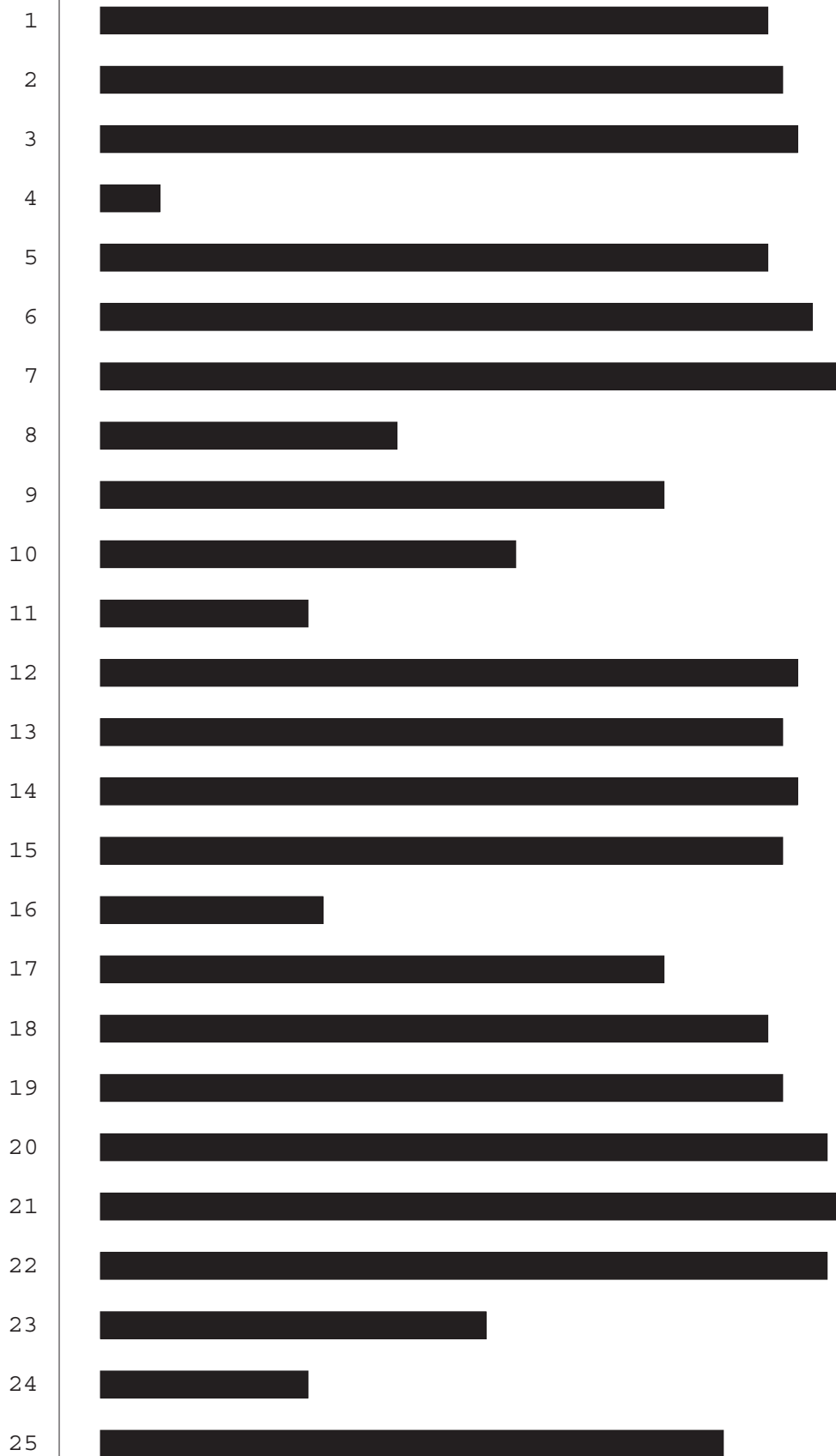
22 A. I do see that.

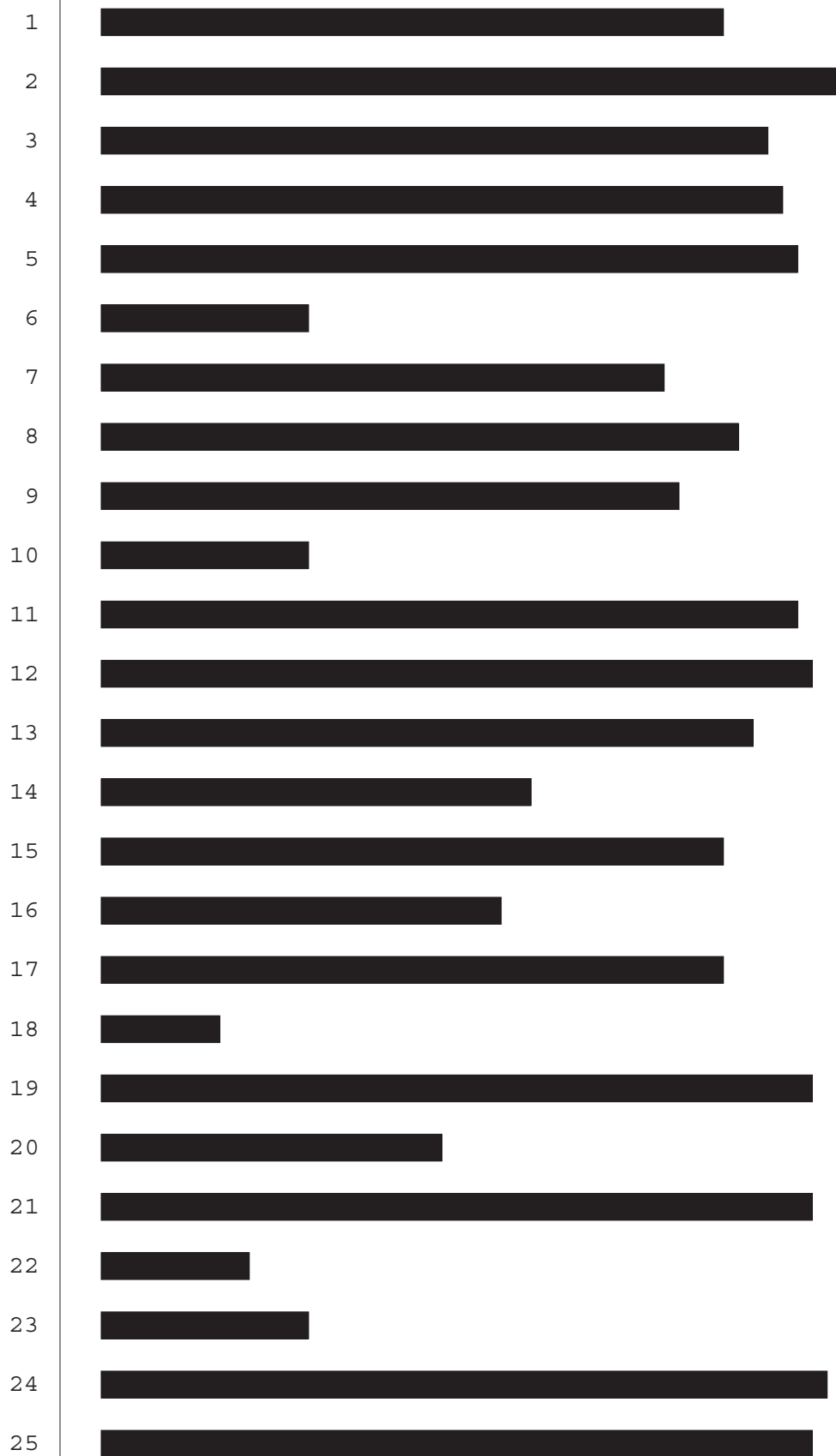
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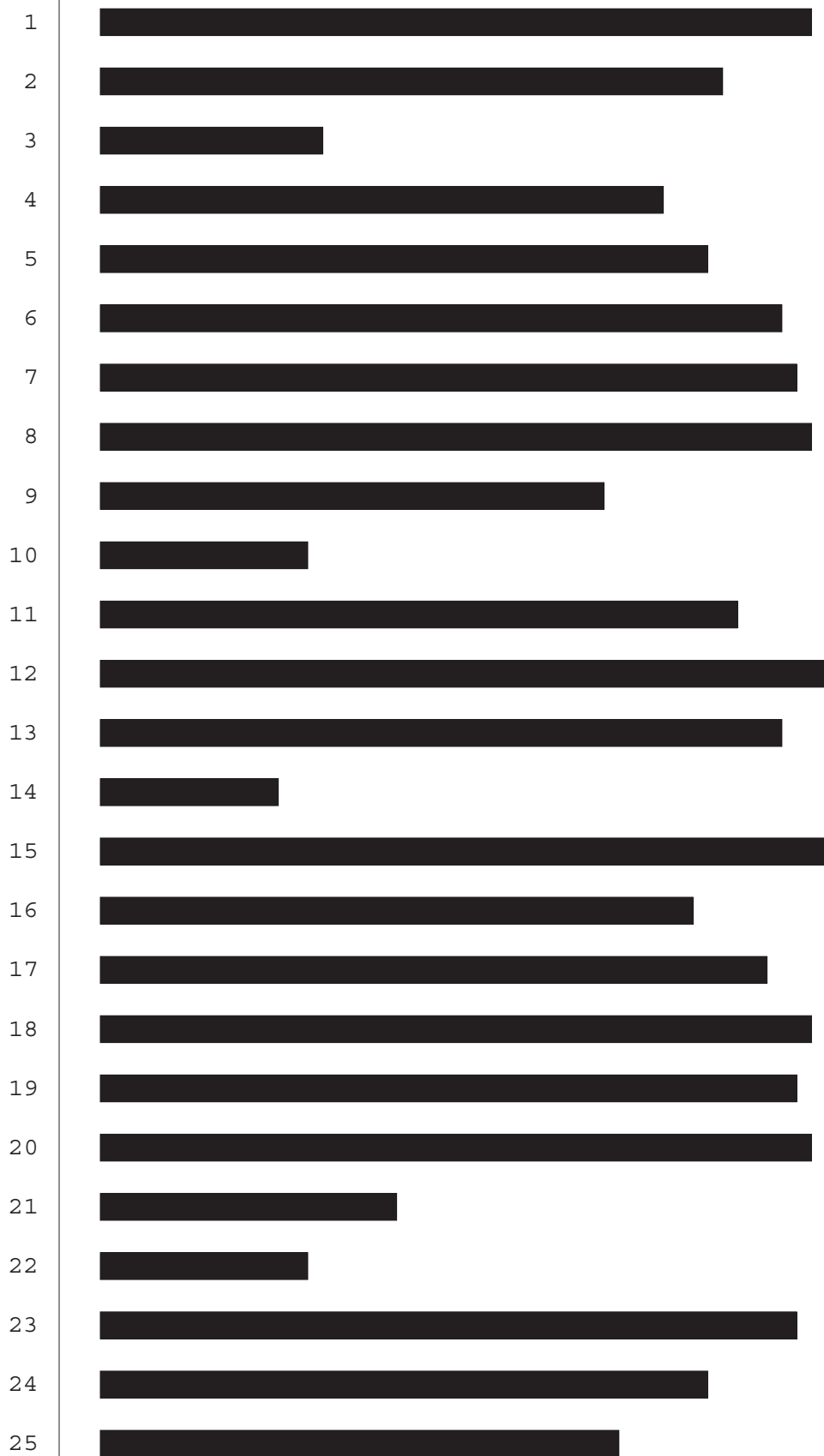




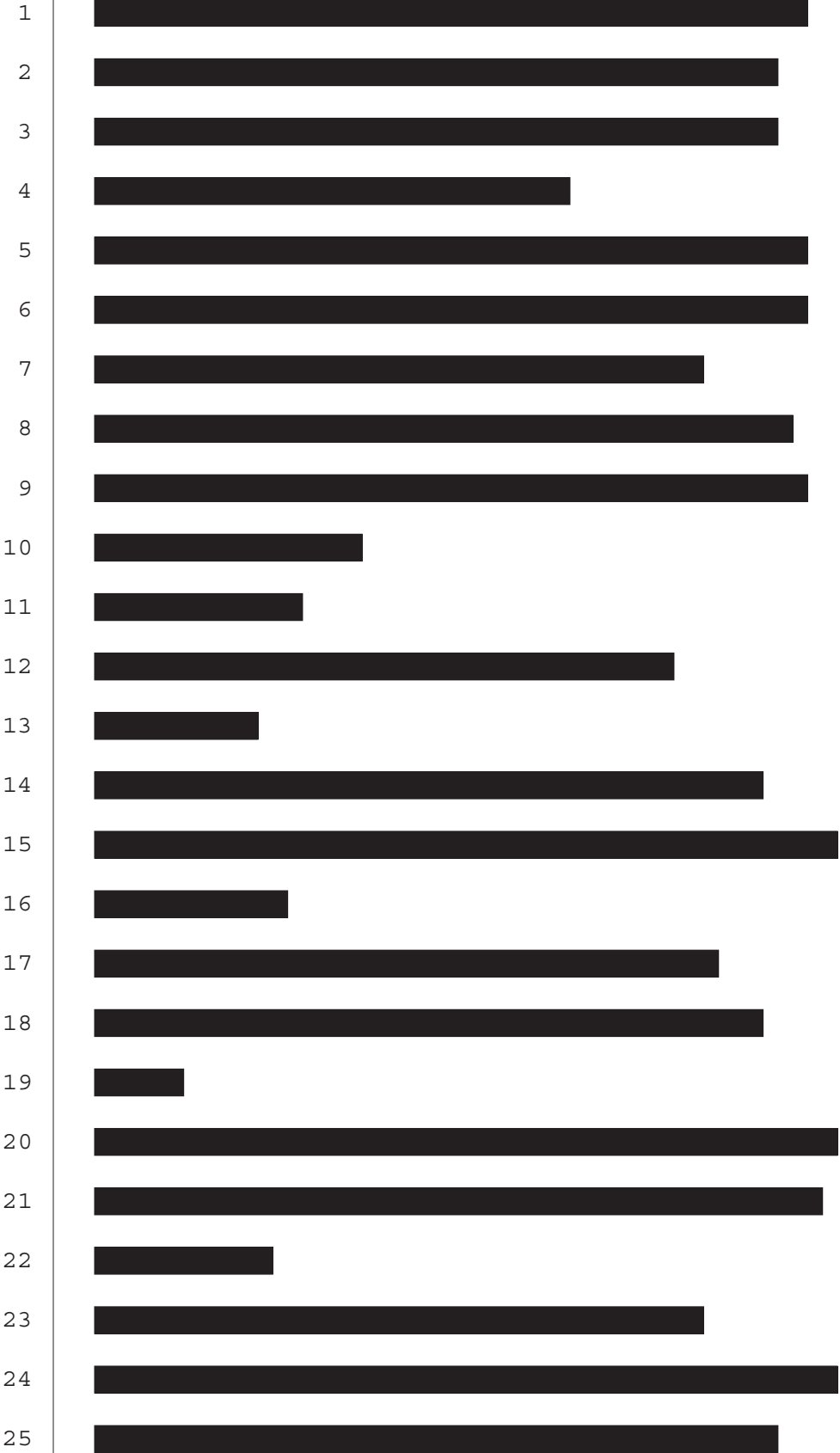


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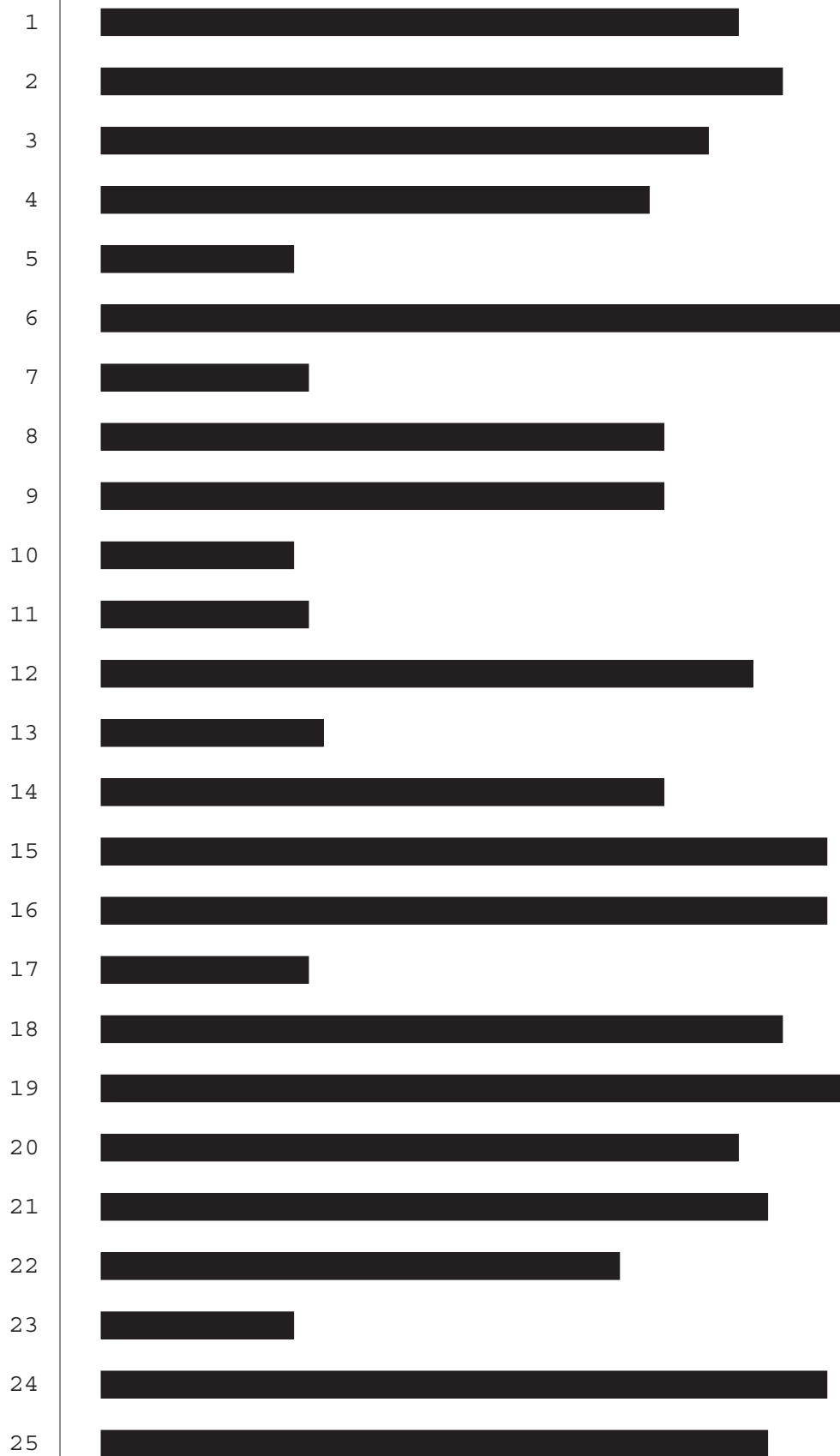
11 Q. When you said you began writing reports
12 in 2008, as you've said, as your r sum says, you
13 were managing or generating over 100 unique
14 periodic reports; correct?

15 A. That's correct.

16 Q. You were generating lots of reports in
17 as early as the 2008 to 2010 timeframe; correct?

18 A. Yes.

19 [REDACTED]
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The next two jobs that are shown on your

1 LinkedIn profile in Exhibit 1 that we haven't
2 talked about is a director of pharmacy business
3 analytics, December 2014 to September 2015.

4 First, how was that a change from your
5 previous position?

6 A. Generally speaking, the position was the
7 same. They promoted me again, but they flipped me
8 over to report again to SFP&A rather than up
9 through the pharmacy org chart.

10 Q. So in terms of individuals, you started
11 reporting at that point to whom?

12 A. Jason Lapina.

13 Q. And during that ten-month period, did
14 you continue to have a team of individuals under
15 you who were directly reporting to you?

16 A. Yes.

17 Q. So did the whole team move over, so to
18 speak, in the org chart?

19 A. I can't recall specifically. If I had
20 to guess, I'd say yes.

21 Q. And then the last job that is -- well,
22 no. I guess there are two more.

23 Then we see director of pharmacy category
24 management, August 2015 to January 2018, correct,
25 on page 1.

1 A. That's correct.

2 Q. So then how was that a change from your
3 preceding positions?

4 A. In August 2015, they took me out of
5 pharmacy finance and analytics and made me
6 responsible for brand and generic manufacturer
7 relationships in procurement, and I relinquished
8 all analytics and finance direct reports.

9 Q. What prompted that change for you?

10 A. The former senior category manager had
11 left the organization, and they needed someone to
12 fill the place.

13 Q. And who was the former senior category
14 manager?

15 A. I should retract that. I'm not sure
16 that was his exact title. It was Mike Bianco.

17 Q. In general terms, you replaced Mike
18 Bianco when he left the organization?

19 A. Yes.

20 Q. And was that something you chose or just
21 were directed to do?

22 A. They asked me if I was interested. Do
23 you really have a choice?

24 Q. I don't know. It depends.

25 A. I accepted the position.

1 Q. In that position who were you reporting
2 to?

3 A. I reported to Adam Zakin.

4 MR. BARTON: Let's go ahead and mark
5 Exhibit 2.

6 (HBC-McClune Exhibit 2 was marked.)

7 THE WITNESS: I won't be able to find my
8 name there.

9 MR. BARTON: I won't either.

10 BY MR. BARTON:

11 Q. I've handed you what we've marked as
12 Exhibit 2. And it just appears to be a partial
13 organizational chart for pharmacy administration
14 as of August 2015. Is that true?

15 A. Based on my look at this right now, yes.

16 Q. And it appears to match up with what you
17 were just testifying about, the change in your
18 position as of August 2015, that you started
19 reporting directly to Adam Zakin; correct?

20 A. Yes.

21 Q. And it would appear that at this point
22 in time, at least from an organizational chart
23 standpoint, there was a team of individuals under
24 you reporting to you; correct?

25 A. That's correct.

1 Q. One of the members of that team is Kris
2 Remas; correct?

3 A. Yes.

4 Q. Is that Kris male or female?

5 A. It's female.

6 Q. So by this point in time, given the
7 change of role for you, were you kind of out of
8 the analytics and data programming side of things
9 by now?

10 A. Yes.

11 Q. And then it appears that in February of
12 2018, you took on a new position again referred to
13 as senior director of pharmacy procurement and
14 business analytics.

15 Do you see that?

16 A. Yes.

17 Q. And that's your current position?

18 A. That is correct.

19 Q. Does that reflect kind of coming back
20 into the analytics side of things?

21 A. It is me maintaining the procurement
22 piece and then reassuming the analytics side.

23 Q. The job just keeps growing.

24 A. Yes.

25 Q. We might be done with Exhibits 1 and 2.

1 A. I'll keep them handy in case you want to
2 go back.

3 MR. BARNES: We should get through three
4 or four exhibits today.

5 MR. BARTON: If we're lucky.

6 (HBC-McClune Exhibit 3 was marked.)

7 BY MR. BARTON:

8 Q. I've handed you what I've marked as
9 Deposition Exhibit 3. This is a multiple-page
10 document. It has our reference number of
11 P-HBC-1003 at the top and a Bates number at the
12 bottom HBC_MDL00034114.

13 Do you have that in front of you?

14 A. Yeah. That's what it looks like.

15 Q. And we won't spend a lot of time on
16 this, but I have a couple of questions about it.

17 First, on the cover page there, it would
18 appear to be a meeting appointment type of notice
19 that was sent to you, among others; correct?

20 A. Yes.

21 Q. And so it would appear that it's kind of
22 setting a meeting in the boardroom for Tuesday
23 executive updates to all of the people who
24 received that invitation; correct?

25 A. Yes, based on my review here.

1 Q. Were you someone who regularly attended
2 a meeting like Tuesday executive updates?

3 A. Not Tuesday executive updates. In this
4 particular -- I think they used that as a meeting
5 organizer, not necessarily a person in the Outlook
6 system.

7 Q. Was this something that was just kind of
8 distributed to you in the regular course of your
9 job at Giant Eagle?

10 A. This particular document, this would --
11 it's for an annual operating plan, so it's once a
12 year.

13 The Tuesday meetings happened every week. So
14 I didn't go every Tuesday, but I would go at least
15 once a year, oftentimes more, but at least once.

16 Q. And if something like an annual plan
17 were to be on the agenda for a Tuesday meeting,
18 that might make it more likely that you would have
19 gone then?

20 A. I would agree with you there.

21 Q. So let's just talk about what this plan
22 really was.

23 First, on the first page it refers to Fiscal
24 Year 2015 AOP/Business Plan; correct?

25 A. Yes.

1 Q. And this appears to just relate to the
2 pharmacy division or part of Giant Eagle; correct?

3 A. Looking at the front page, yes.

4 Q. Right, based on the title.

5 And it has a date of June 24, 2014. And I
6 believe that's when the meeting notice on the
7 first page appears to have been set.

8 So, first, let me just ask: What was the
9 fiscal year for Giant Eagle at that time? Did it
10 run midyear to midyear or calendar year?

11 A. Since I've been at Giant Eagle, it runs
12 July to June.

13 Q. July 1 to June 30?

14 A. Yeah. Date falls slightly off because
15 of the leap years, et cetera.

16 Q. So was it usual and customary for Giant
17 Eagle as it approached the end of a fiscal year
18 to develop, circulate and talk about a plan for
19 the coming fiscal year?

20 A. Yeah. We go through planning cycles.

21 Q. That's kind of a normal business thing
22 to do; correct?

23 A. Based on my experience at Giant Eagle,
24 yes.

25 Q. Yes. And fiscal year 2015 would refer

1 to the fiscal that began July 1, 2014 and ended
2 June 30, 2015; is that right?

3 A. Roughly. Again, not sure if it started
4 on the 1st, but...

5 Q. So if you'll turn with me to what is the
6 fifth page of this -- actually, let's do the
7 fourth page, the one up at the top that's 001.4.
8 I guess there's another page 4 on the bottom;
9 right?

10 There's a box there called Key Initiatives,
11 and it just identifies certain issues. The first
12 issue that is listed there is an issue called
13 Noncompliance. Do you see that?

14 A. Yes. I see it.

15 Q. And there's not a lot of detail here and
16 so I don't know whether you can put that in any
17 context for me or not.

18 But do you know in that context what was
19 being conveyed or meant by noncompliance?

20 A. I do not.

21 Q. That's fine. If you turn the page, page
22 5, there's a box listing a series of initiatives;
23 correct?

24 A. Yes.

25 Q. And then there are also columns for

1 what's said is "Owner." But I presume that's
2 assigning that initiative to a person who is
3 primarily responsible for it; correct?

4 A. Yes. That would be my assumption.

5 Q. And then a target date for some of them;
6 right?

7 A. Yes.

8 Q. So the first initiative shown there
9 says, "Obtain vendor accredited wholesale
10 certification at HBC"; right?

11 A. Yes. That's how it reads.

12 Q. Are you familiar with that effort, in
13 general, that Giant Eagle and HBC set out to
14 obtain VAWD, the Vendor Accredited Wholesale
15 Distributors, certification for the HBC facility,
16 and this describes that initiative?

17 MR. KOBRIN: Object to form.

18 THE WITNESS: Yes. I am familiar.

19 BY MR. BARTON:

20 Q. So as of June 24, 2014, when this was
21 prepared, is it true that VAWD certification for
22 the HBC facility had not yet been obtained?

23 A. To my best recollection, yes. It has
24 not been obtained.

25 Q. And the target date as set here in this

1 business plan was for that to happen in -- would
2 you interpret that as the third quarter, Q3, of
3 fiscal year 2015?

4 A. Yes.

5 Q. So at the time in June of 2014, the goal
6 of the company as it related to VAWD certification
7 for HBC was to accomplish that by the third
8 quarter of fiscal year 2015, which would have
9 been, I assume, kind of January to March of 2015.

10 A. Yes.

11 Q. And it has a bullet point under it. It
12 says, "Qualifies HBC to distribute to Maryland and
13 Indiana."

14 Did you understand that to be the primary
15 business benefit to HBC in obtaining VAWD
16 certification for the HBC warehouse?

17 A. Yes.

18 Q. That was kind of the motivating reason
19 that it was an initiative as of then?

20 A. Yes.

21 Q. And then if you go down further, there's
22 an initiative that says, reads, "Enhance
23 suspicious order monitoring system (SOMS) at HBC."

24 Do you see that?

25 A. Yes. I see that.

1 Q. And then it cites a federal requirement
2 underneath it, 21 CFR 1301.74(b); correct?

3 A. Yes, it does.

4 Q. Do you recall being a part of any
5 discussions at this time or in this meeting about
6 what was needed to enhance the suspicious order
7 monitoring system at that time?

8 MR. KOBRIN: Object to form.

9 THE WITNESS: I don't recall specifics.

10 BY MR. BARTON:

11 Q. But you would agree from this document
12 and that being listed as an initiative like the
13 other initiatives you see there, that as of
14 June 24, 2014, it was an initiative or goal of
15 Giant Eagle to enhance its suspicious order
16 monitoring system at HBC for the coming fiscal
17 year?

18 A. Based on how this reads, yes, we were
19 looking to continually improve.

20 Q. But as you sit here today, you don't
21 recall specific discussions about exactly what
22 enhancements were being talked about in this
23 meeting at that time?

24 A. I don't recall specifics, no.

25 Q. It would appear that Joe/HBC is

1 assigned, if you will, as owner of that
2 initiative; true?

3 A. Yes.

4 Q. Does that refer to Joe Millward?

5 A. I'm not sure.

6 Q. And you would agree that there was not a
7 target date specifically established, at least in
8 this plan, as of that time; correct?

9 A. According to the document, the date was
10 TBD.

11 Q. To be determined; correct?

12 A. If that's your interpretation of it,
13 yes. Yes.

14 Q. Is that your interpretation?

15 A. That would be my interpretation of it.

16 Q. Are you aware of any specific target
17 date outside of this document that was established
18 then or shortly thereafter for that initiative?

19 A. I don't recall specifically.

20 Q. The next one right below it is,
21 "Implement controlled substances ordering system,"
22 and then in paren what we sometimes say as "CSOS,"
23 that's C-S-O-S; correct?

24 A. Yes. I see that.

25 Q. And there's an owner or person assigned

1 to that that is Greg. And do you interpret that
2 to mean Greg Carlson?

3 A. I would agree with that interpretation.

4 Q. And with a target date of that
5 implementation of second quarter of fiscal year
6 2015; correct?

7 A. That's correct.

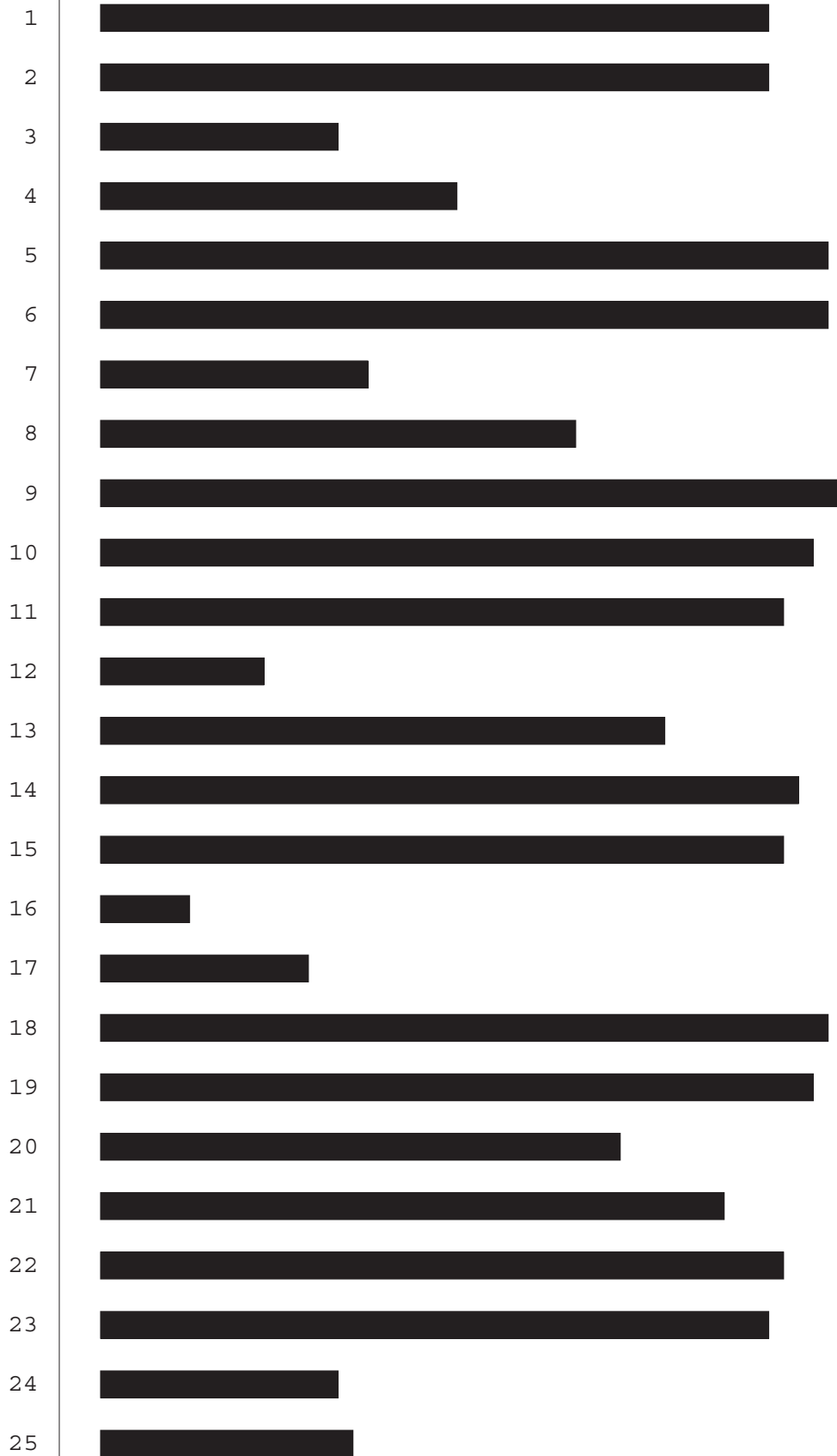
8 Q. Which, based on the fiscal year and when
9 it falls, second quarter of fiscal year 2015 would
10 have been October, November, December of calendar
11 year 2014; correct?

12 A. Correct.

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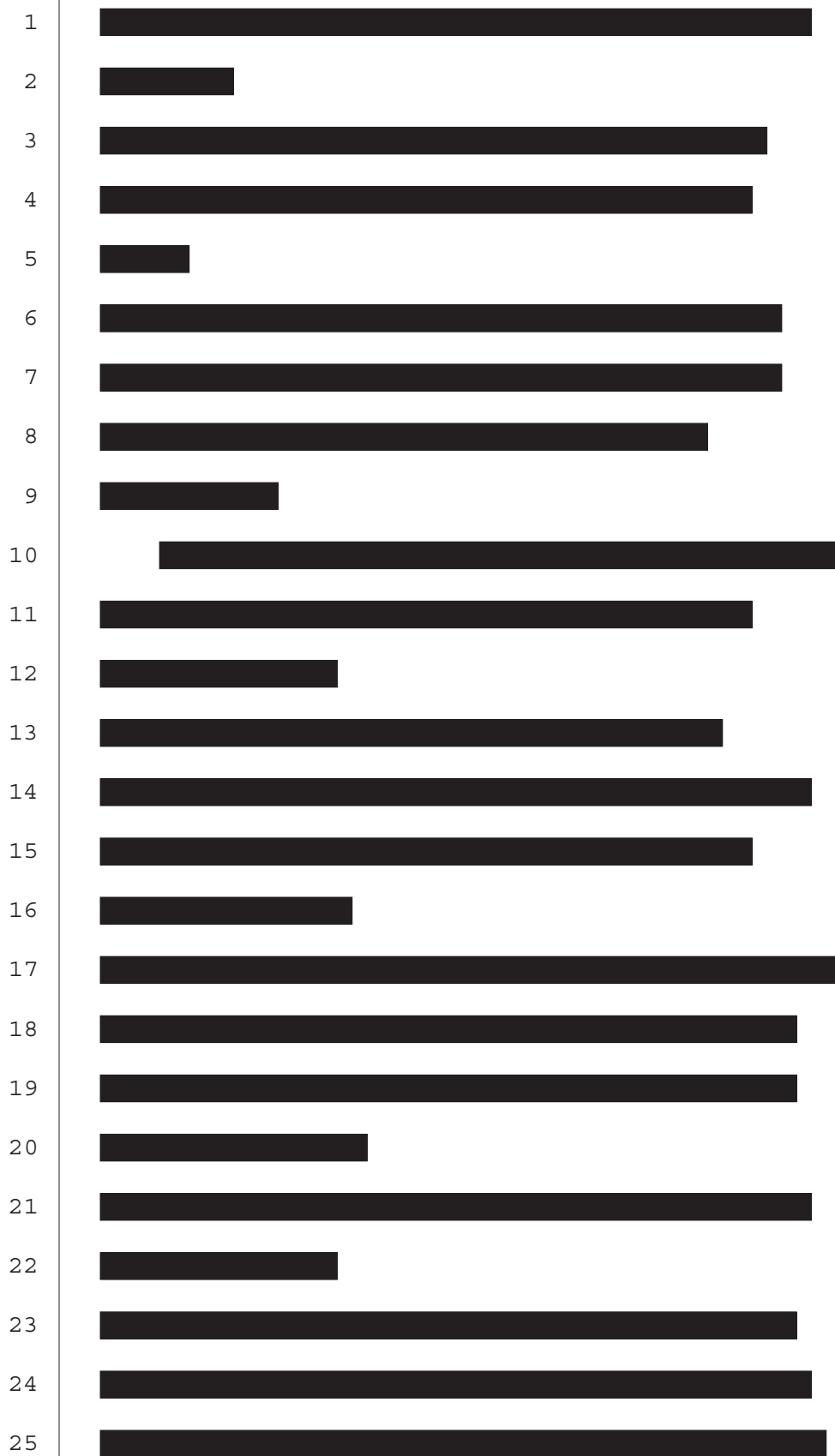
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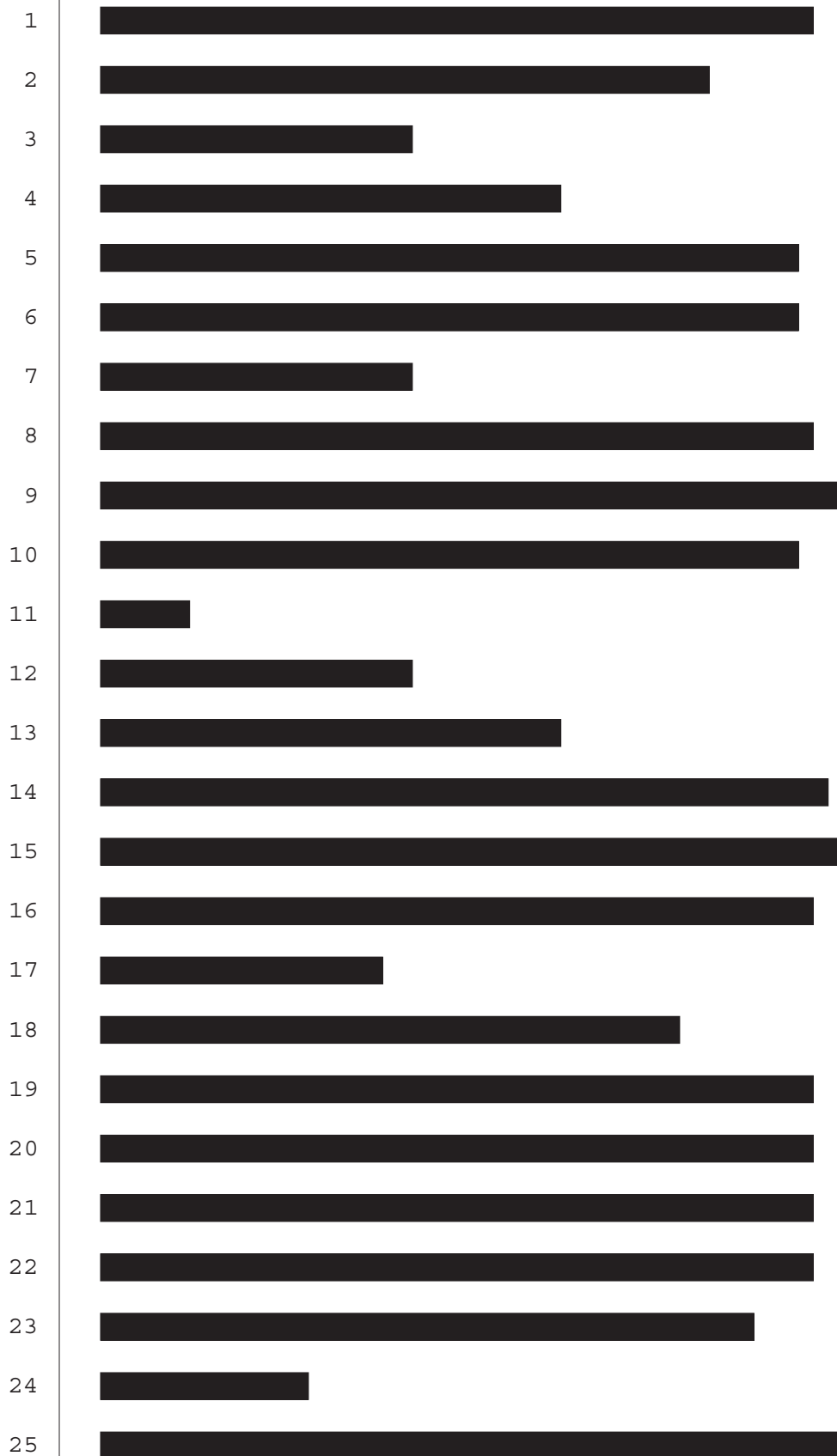


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MR. BARTON: Okay. Very good. We can
take a break now.

THE VIDEOGRAPHER: We're going off the
record. The time now is 11:46 a.m.

(Recess from 11:46 a.m. to 12:07 p.m.)

THE VIDEOGRAPHER: We're now going back
on the record. The time is 12:07 p.m.

(HBC-McClune Exhibit 4 was marked.)

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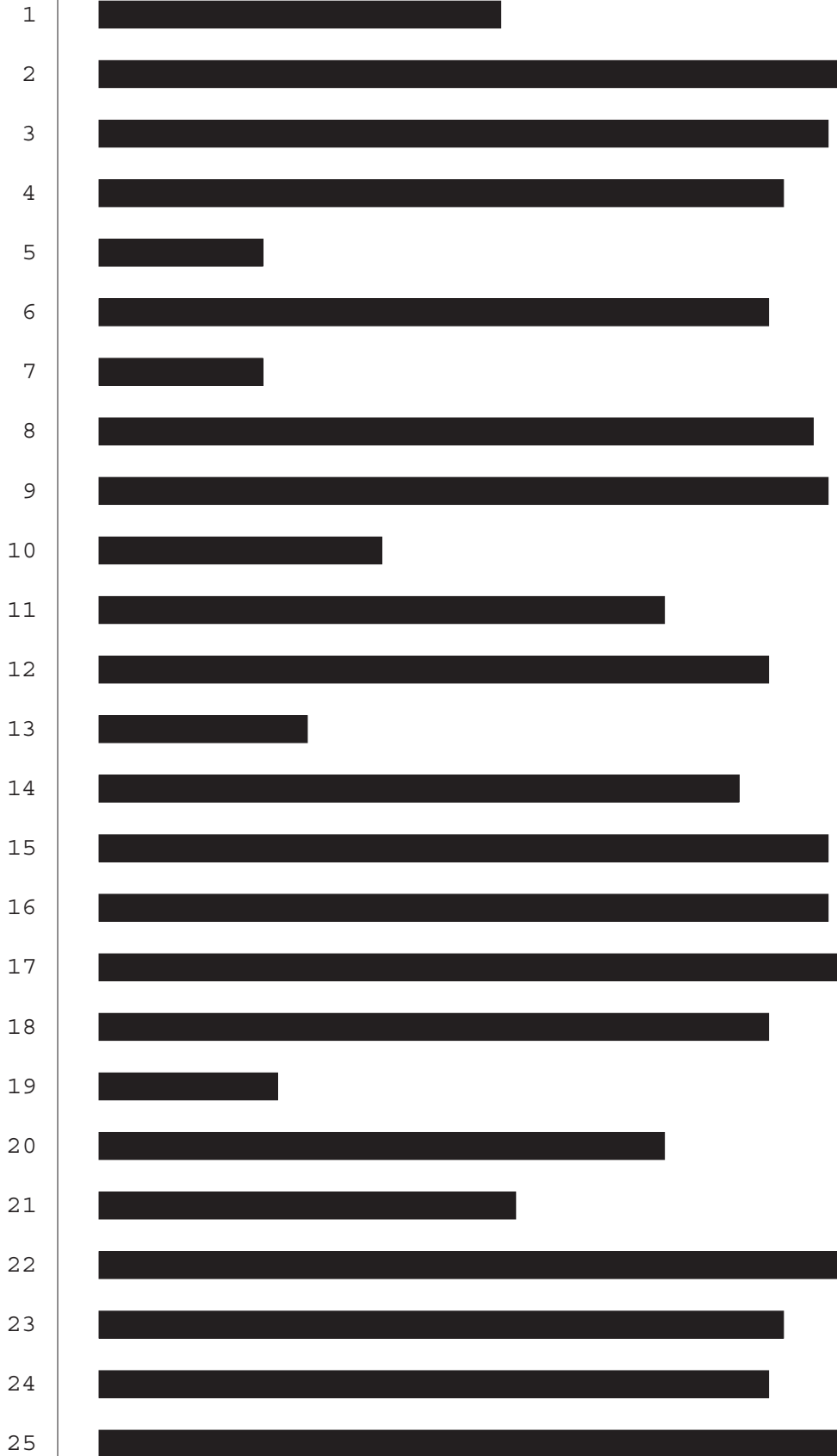
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1 was under the regulations. And that's what led to
2 his answer that he's not a lawyer.

3 Putting an additional gloss on that and
4 saying he's not comfortable answering certain
5 questions -- he's told you that he is comfortable
6 answering the compliance question, that he
7 believes they were in compliance.

8 MR. BARTON: Right. I'm exploring why
9 he's comfortable answering the question about why
10 he knows they're in compliance and not comfortable
11 answering questions what they're subject to.
12 That's all. I'm just exploring what the basis for
13 that is.

14 MR. KOBRIN: Yeah. And I'm just --

15 MR. BARTON: You can object to form all
16 you want. I'm just seeing what the witness is
17 willing to tell me.

18 MR. KOBRIN: My objection to form is
19 that you're misrepresenting what he said and what
20 he was comfortable and not comfortable doing.

21 MR. BARTON: I disagree. And if he
22 thinks I've done that, he's free to ask me to
23 rephrase.

24 BY MR. BARTON:

25 Q. All right. We don't need to belabor

1 this, but this exhibit that we're looking at right
2 now, Exhibit 5, in terms of its content, does it
3 describe, at least in part, part of what Giant
4 Eagle was doing at some point in time in an
5 attempt to meet obligations it believed it had
6 under the 21 CFR 1301.74(b)?

7 MR. KOBRIN: Object to form.

8 THE WITNESS: In my nonlegal opinion,
9 this would be one of the aspects we used in order
10 to maintain compliance.

11 BY MR. BARTON:

12 Q. And this aspect described in here, the
13 first sentence of the second paragraph, let's look
14 at that. "Giant Eagle has created monthly
15 ordering threshold levels for products based on
16 GPI level reporting for controlled substances."

17 Did I read that correctly?

18 A. Yes.

19 Q. First of all, what is GPI level?

20 A. GPI stands for generic product
21 indicator. The level would be at which the
22 product is that level. It's organized by GPI and
23 not another level.

24 Q. I guess I need to ask a little bit more
25 about that just to understand it.

1 GPI level, how would GPI level help Giant
2 Eagle -- would the GPI level be used to help
3 create the threshold levels against which it was
4 comparing monthly ordering?

5 A. Yes. Reviewing and analyzing at the GPI
6 level rather than the NDC level is the more
7 accurate way to look at any analytics regarding
8 any medication, for that matter.

9 Q. How so? Like what's the difference
10 between the GPI level and the NDC level?

11 A. Under a single 14-digit GPI, you'll --
12 you could have one brand NDC, which stands for
13 National Drug Code, and many generic NDCs that all
14 are therapeutically equivalent in nature.

15 Again, preface this I'm not a clinician, so
16 that may be subject to interpretation.

17 Q. Who assigns the GPI level to a given
18 medication?

19 MR. KOBRIN: Object to form.

20 THE WITNESS: I don't know the answer to
21 that question.

22 BY MR. BARTON:

23 Q. All I'm trying to understand -- I don't
24 think there's anything nefarious in it. I'm just
25 trying to understand what it is.

1 A. GPI is issued by Medi-Span.

2 Q. And who is that?

3 A. It's a subsidiary of Wolters Kluwer.

4 It's a data provider for the pharmaceutical
5 industry cataloging.

6 Q. Got it. So GPI level is just a way to
7 try to identify or capture a certain class or
8 category of related products; is that fair?

9 A. That's a fair assessment, yes.

10 Q. And the reason it's better than NDC
11 level is NDC level -- if you were just trying to
12 count by NDC level, you might miss some generics
13 that are presumed to be therapeutically equivalent
14 and may be prescribed for the same reason as the
15 brand NDC level; right?

16 MR. KOBRIN: Object to form.

17 THE WITNESS: Again, not a clinician,
18 but yes.

19 BY MR. BARTON:

20 Q. I think I'm following now. So GPI level
21 is better because it's hopefully more inclusive
22 than NDC level; right?

23 A. Yes.

24 Q. So the first sentence then, "Giant Eagle
25 has created monthly ordering threshold levels for

1 products based on GPI level reported for
2 controlled substances," is that a statement that
3 you think accurately reflects something that Giant
4 Eagle did at some point in time?

5 A. Again, I don't know if this document was
6 in draft form, final, or what the context was.
7 But yes.

8 Q. And were you personally involved -- is
9 one of the things you did personally was
10 contribute to that creation of the monthly
11 ordering threshold levels for products?

12 A. Yes, myself or my team.

13 Q. And is that part of the programming
14 project that occurred that led to the generation
15 of the daily threshold reports?

16 A. Again, this document was dated
17 11/16/2014. We know that the threshold, daily
18 threshold reports started in 2013 based on our
19 earlier review.

20 So this statement would refer to that or some
21 subsequent work associated to that analytics and
22 reporting.

23 Q. Yeah. Absolutely fair enough. And I'm
24 not trying to suggest that it only happened in
25 November of 2014. I'm actually not concerned --

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18 MR. KOBRIN: Break for lunch?

19 MR. BARTON: Sure.

20 THE VIDEOGRAPHER: Going off the record.

21 The time is 12:49 p.m.

22 (Recess from 12:49 p.m. to 1:43 p.m.)

23 THE VIDEOGRAPHER: We're going back on
24 the record. The time now is 1:43 p.m.
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1 purpose, this part of the suspicious order
2 monitoring program, that the companywide average
3 threshold was not optimal?

4 MR. KOBRIN: Object to form.

5 THE WITNESS: Can you restate the
6 question?

7 BY MR. BARTON:

8 Q. Yeah. Did you have personal concerns at
9 any time that the companywide average threshold
10 was being used as the threshold in this program?

11 Did you have personal concerns that that was
12 not the optimal threshold to use?

13 A. I didn't have any concerns about that
14 not being the optimal threshold.

15 Q. Do you recall any conversations or
16 communications, maybe in 2013 or 2014, about
17 whether that threshold should be used or continues
18 to be used as it was?

19 A. I don't recall any specifics.

20 Q. Would you agree that a companywide
21 threshold which is used for this purpose to just
22 provide some line against which orders from a
23 given store are compared to see if they fall over
24 the line or not, would you agree that a
25 companywide average, as a threshold, has a

1 weakness in terms of its applicability to stores
2 within the Giant Eagle system that routinely are
3 based on their own characteristics well below or
4 well above the company average for sales?

5 MR. KOBRIN: Object to form.

6 THE WITNESS: Can you restate?

7 BY MR. BARTON:

8 Q. Yeah. Bad question. Let me ask a
9 different question.

10 A. Okay. That's fine.

11 Q. If you use a company average as your
12 threshold -- you have to choose some threshold,
13 right, if that's what you're going to do, is
14 compare orders against a threshold?

15 If you use a company average as a threshold,
16 one thing that you aren't doing then through that
17 is comparing a store's ordering patterns to
18 itself; true?

19 MR. KOBRIN: Object to form.

20 THE WITNESS: I mean, if you're using a
21 companywide average, no, you wouldn't be looking
22 at just solely the store's history.

23 BY MR. BARTON:

24 Q. Right. Those two things are mutually
25 exclusive. If what you're looking at is comparing

1 the store to the company average, you're not
2 comparing that store to itself; right?

3 A. Correct.

4 Q. So, for example, if you had a small
5 store relative to the company average -- and there
6 were such stores, I assume, in the Giant Eagle
7 system; right?

8 MR. KOBRIN: Object to form.

9 THE WITNESS: I'd have to see the data,
10 but you're going to have some high-performing and
11 lower-performing stores.

12 BY MR. BARTON:

13 Q. So if you had a smaller store relative
14 to company average, then always comparing that
15 store's orders to the company average might never
16 reveal a pattern occurring within that store's
17 orders that might deviate or change, but never
18 reach the threshold.

19 That could happen; right?

20 MR. KOBRIN: Object to form.

21 THE WITNESS: There are still other
22 processes in place that would catch those
23 abnormalities. This check was just an additional
24 redundant check.

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22 Q. And your job with Giant Eagle, really
23 from the time that you were hired on in various
24 capacities, involved, in large respects, the
25 analysis of data to help Giant Eagle do what it

1 was trying to do; right?

2 A. I would agree with that assumption.

3 Q. Because that's where your skill set
4 really rested, was in data analytics and figuring
5 out how to draw the right information and
6 conclusions from data; correct?

7 A. Yes.

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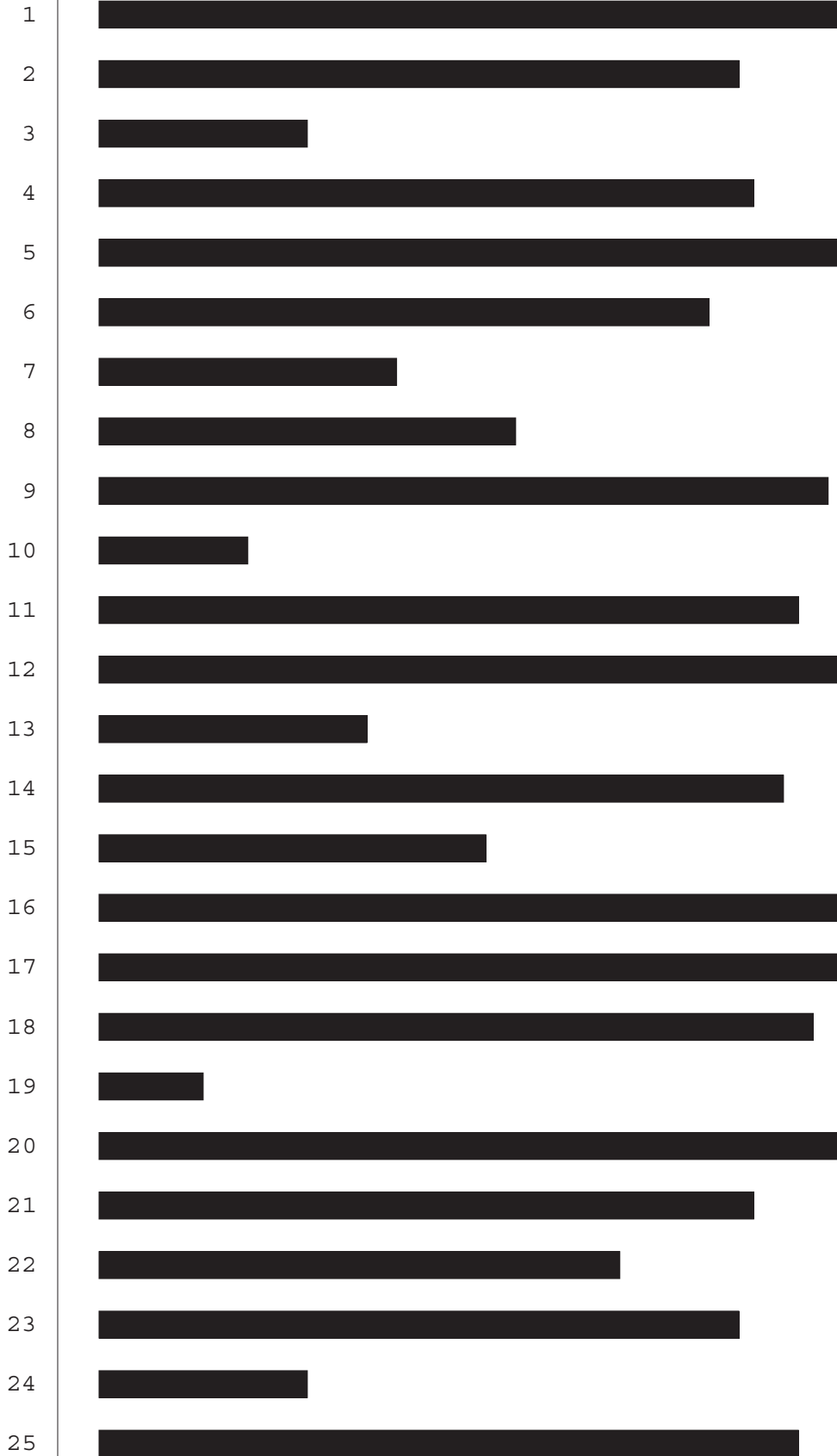
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MR. KOBRIN: This is a big document. Do you want to take a break before? Is it going to be a lot of questions or --

MR. BARTON: It won't be that many, but we can certainly -- I don't know where we are on

1 time. I'm not looking at the clock. It's
2 probably a good time. Okay. Let's go ahead and
3 take a break.

4 I mean, I'm not trying to set him up, but I
5 don't have that many questions about it. It's
6 relatively self-explanatory how it relates to the
7 last one, I think.

8 But, yeah, take a look. Take your time.

9 MR. KOBRIN: Do you want to take a break
10 or do you want to keep on?

11 THE WITNESS: Why don't we take a break.

12 THE VIDEOGRAPHER: 2:53 p.m., we're
13 going off the record.

14 (Recess from 2:53 p.m. to 3:19 p.m.)

15 THE VIDEOGRAPHER: We're now back on the
16 record. The time is 3:19 p.m.

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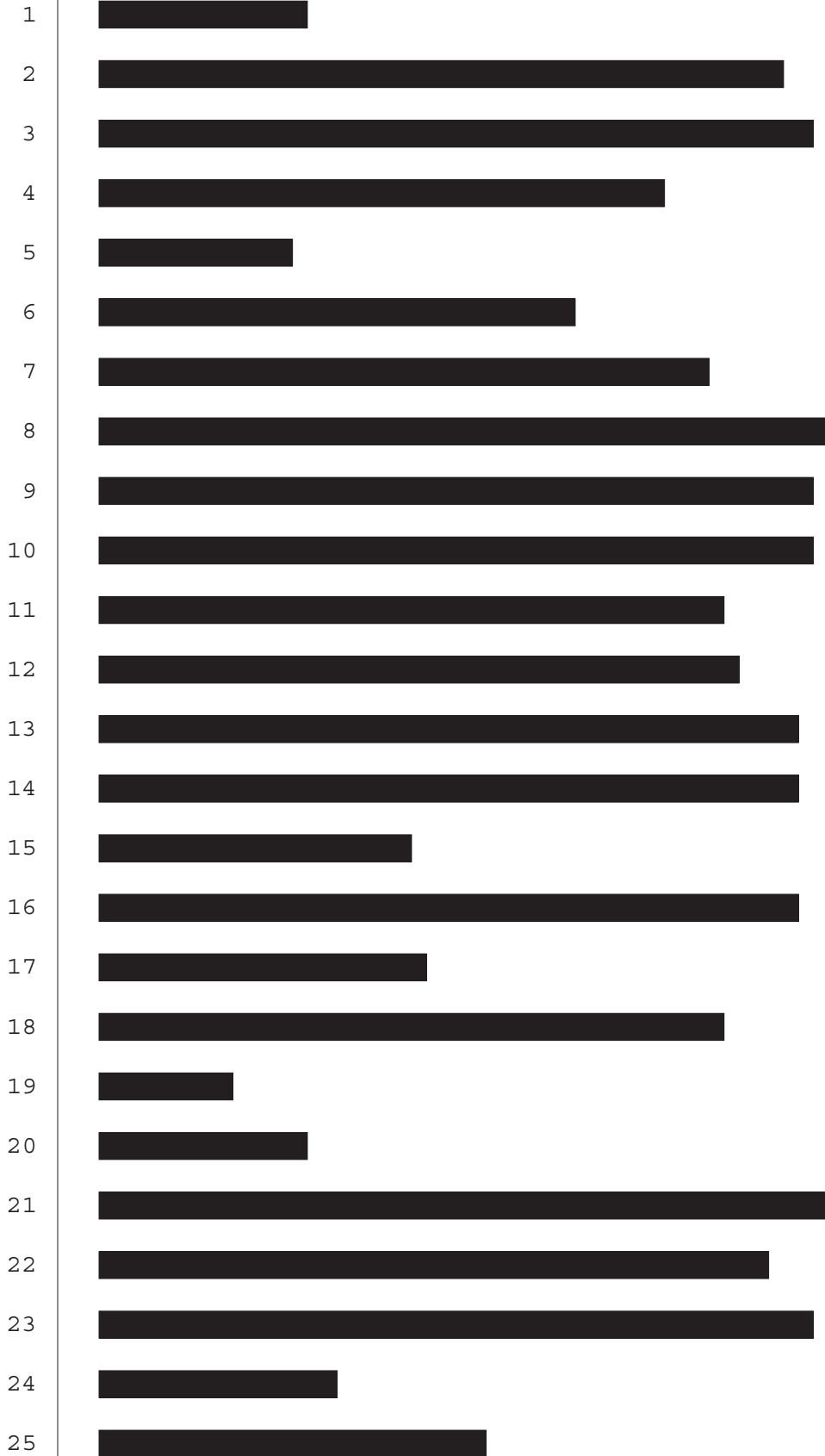
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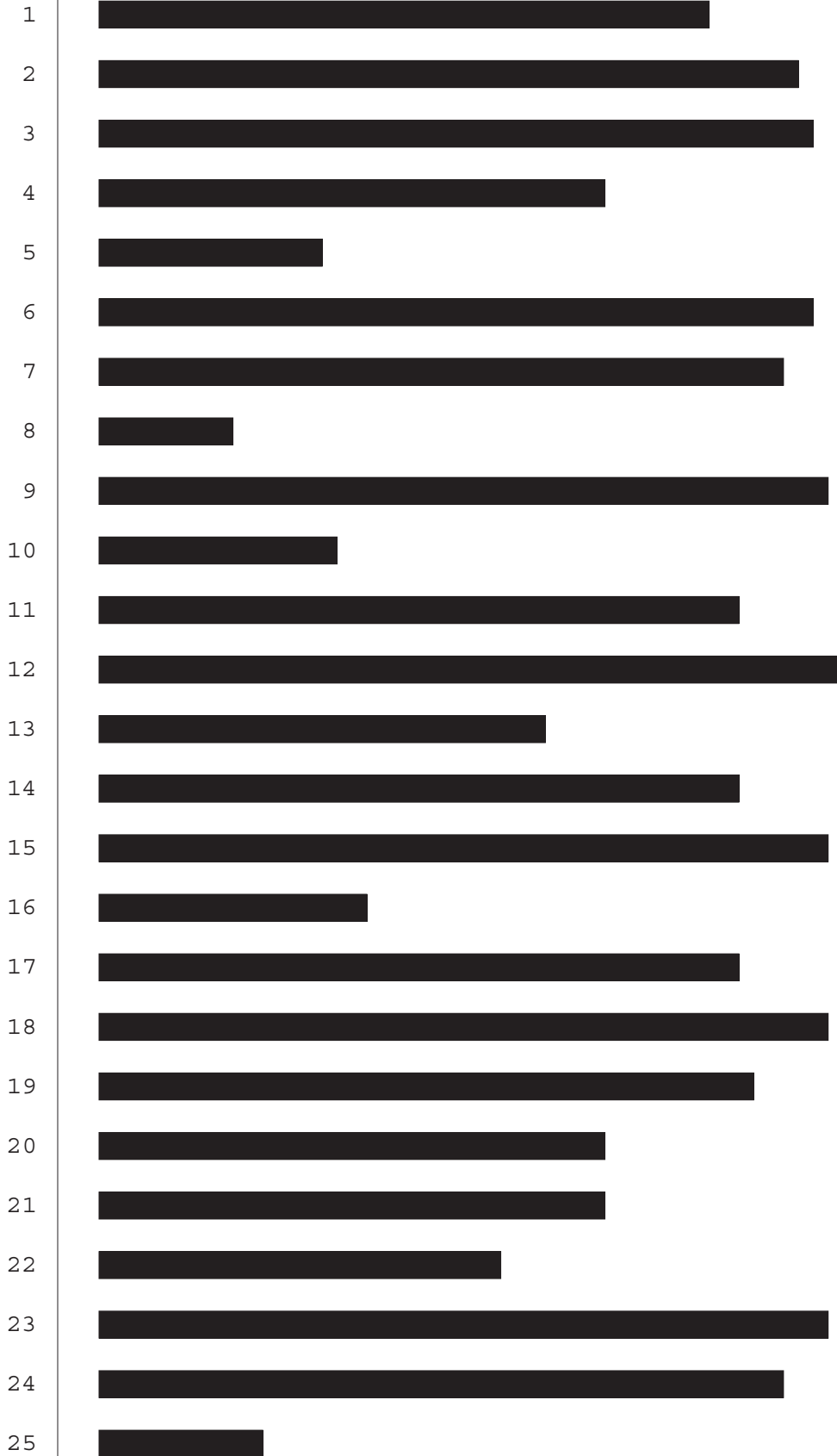
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21 THE VIDEOGRAPHER: We're now going back
22 on the record. The time is 4:28 p.m.

23 EXAMINATION

24 BY MS. WICKLUND:

25 Q. Mr. McClune, I'm Britt Wicklund. We met

1 earlier. I just wanted to ask you a few
2 questions.

3 MS. WICKLUND: I am going to mark this
4 as Exhibit 17.

5 (HBC-McClune Exhibit 17 was marked.)

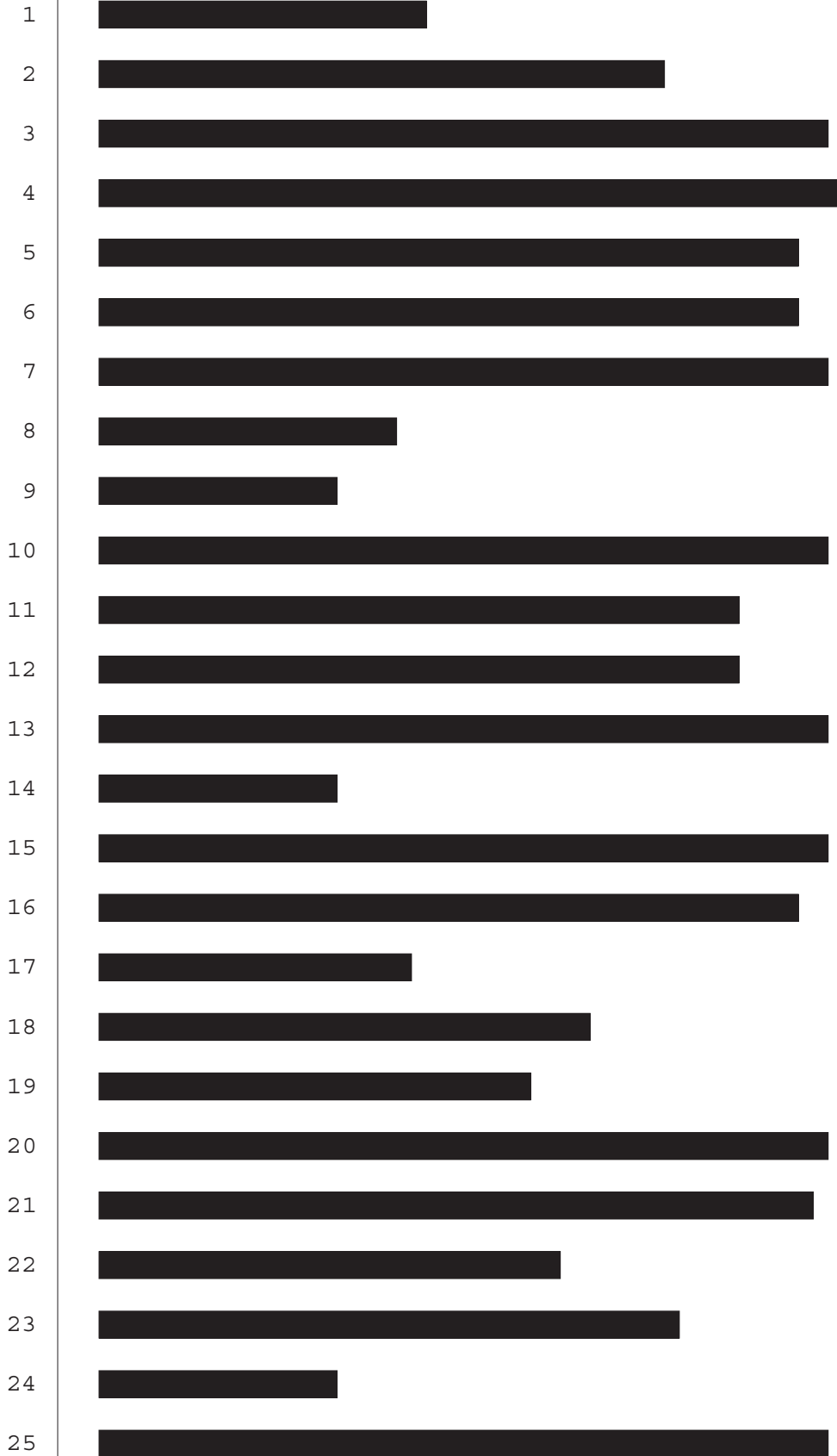
6 BY MS. WICKLUND:

7 Q. I'll pass that to you. And
8 Exhibit 250 -- I'm sorry -- Exhibit 17 that I've
9 just marked is our internal reference of number
10 HBC-150. It is an email that is Bates numbered
11 HBC_MDL00035614.

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18 THE VIDEOGRAPHER: Going off the record.

19 The time is 4:45 p.m.

20 (Recess from 4:54 p.m. to 4:54 p.m.)

21 THE VIDEOGRAPHER: We're now back on the
22 record 4:55 p.m.

23 EXAMINATION

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1 COMMONWEALTH OF PENNSYLVANIA)

2 COUNTY OF ALLEGHENY) SS:

3 C E R T I F I C A T E

4 I, Ann Medis, Registered Professional
5 Reporter, Certified Livenote Reporter and Notary
6 Public within and for the Commonwealth of
7 Pennsylvania, do hereby certify:

8 That ROBERT ANTHONY MCCLUNE, the witness
9 whose deposition is hereinbefore set forth, was
10 duly sworn by me and that such deposition is a
11 true record of the testimony given by such
12 witness.

13 I further certify the inspection,
14 reading and signing of said deposition were not
15 waived by counsel for the respective parties and
16 by the witness.

17 I further certify that I am not related
18 to any of the parties to this action by blood or
19 marriage and that I am in no way interested in the
20 outcome of this matter.

21 IN WITNESS WHEREOF, I have hereunto set
22 my hand this 30th day of January, 2019.

23
24 _____
Notary Public
25

COMMONWEALTH OF PENNSYLVANIA) E R R A T A
COUNTY OF ALLEGHENY) S H E E T

I, ROBERT A. MCCLUNE, have read the foregoing pages of my deposition given on January 25, 2019, and wish to make the following, if any, amendments, additions, deletions or corrections:

Line Change and reason for change:

_____	_____	_____
_____	_____	_____
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In all other respects, the transcript is true and correct.

ROBERT A. MCCLUNE

_____ day of _____, 2019.

Notary Public